INVESTIGATION REPORT

THE MECHANISM FOR ENFORCING THE PROHIBITION OF SMOKING IN NO SMOKING AREAS AND PUBLIC TRANSPORT CARRIERS

March 2002

Office of The Ombudsman

Hong Kong

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Legend of Abbreviations

AA	Airport Authority
API	Announcement of Public Interest
COSH	Hong Kong Council on Smoking and Health
DH	Department of Health
ED	Education Department
EFB	Environment and Food Bureau
EMB	Education and Manpower Bureau
EMSD	Electrical and Mechanical Services Department
FEHD	Food and Environmental Hygiene Department
HA	Hospital Authority
HKAPA	Hong Kong Academy for Performing Arts
HWB	Health and Welfare Bureau (Health and Welfare Branch before July 1997)
ISD	Information Services Department
KCR	Kowloon-Canton Railway
KCRC	Kowloon-Canton Railway Corporation
LCSD	Leisure and Cultural Services Department
MD	Marine Department
MTR	Mass Transit Railway
MTRCL	Mass Transit Railway Corporation Limited
SHW	Secretary for Health and Welfare
TCO	Tobacco Control Office
TD	Transport Department
TELA	Television and Entertainment Licensing Authority
USD	Urban Services Department

1

INTRODUCTION

BACKGROUND

1.1 Community concern has been rising over the adequacy and effectiveness of the enforcement action against illegal smoking taken by relevant authorities under Part II of the Smoking (Public Health) Ordinance (Cap. 371) (hereinafter referred to as the Ordinance). In response to community criticism that Government had not taken sufficiently firm action against smoking in statutory no smoking areas, particularly in restaurants, this Office initiated a preliminary assessment on the subject in late January 2001. The assessment concluded that closer study was warranted. The Ombudsman, therefore, decided in the public interest to conduct a direct investigation under section 7 (1)(a)(ii) of The Ombudsman Ordinance (Cap. 397). The Secretary for Health and Welfare (SHW) was notified in late May 2001. A press announcement was issued in late June 2001.

PURPOSE AND AMBIT

1.2 This direct investigation aims to -

(a) examine the mechanism through which

Government enforces the provisions of Part II of the Ordinance;

(b) take stock of such enforcement efforts;

(c) evaluate the adequacy and effectiveness of such mechanism and efforts; and

(d) assess the need, if any, for improvement.

1.3 The scope of investigation includes -

(a) the general background to the introduction of the Ordinance, its main features and the specific roles played and functions discharged by Health and Welfare Bureau (HWB) in facilitating enforcement of the provisions under its Part II;

(b) the administrative mechanism adopted by Government to enforce the provisions of Part II of the Ordinance;

(c) the enforcement efforts made by Government; and

(d) improvement measures taken or to be taken by Government in this respect.

1.4 The Ombudsman emphasises that the sole aim of this investigation is to examine the effectiveness or otherwise of the enforcement of Part II of the Ordinance. The Ombudsman takes no position on the anti-smoking policy.

METHODOLOGY

1.5 For this investigation, we have -

(a) studied relevant information, documents and statistical data of HWB and other Government departments;

(b) discussed with relevant Government officials;

(c) sought the views of the Hong Kong Council on Smoking and Health (COSH); and

(d) considered public opinions on this subject in general and in response to Government's consultation document (June 2001) in particular.

REPORT

1.6 The investigation report in draft was sent to HWB, Environment and Food Bureau (EFB), Food and Environmental Hygiene Department (FEHD) and Department of Health (DH) for

comments on 6 March 2002. This final investigation report, incorporating their comments and our concluding remarks, was issued on 26 March 2002.

2

LEGISLATIVE FRAMEWORK

TOBACCO CONTROL POLICY

2.1 Government's established policy on tobacco control is, through a step-by-step approach, to discourage smoking, contain the proliferation of tobacco use and protect the public from the harm of passive smoking. To achieve these objectives, Government has adopted a multi-prong approach comprising legislation, enforcement, publicity, education and taxation.

Legislation

2.2 The Ordinance, first enacted in 1982, provides a legislative framework for tobacco control. It prohibits smoking in designated no smoking areas and restricts the advertisement, sale and promotion of tobacco products. Major amendments to the Ordinance were enacted in January 1992 and June 1997 which, *inter alia*, extended the statutory ban on smoking to more indoor public places and to public transport carriers. In June 2001, Government has proposed further amendments to the Ordinance (details at Chapter 4).

Enforcement

2.3 A host of Government departments is involved in enforcing various provisions of the Ordinance : the Police, Customs and Excise Department, FEHD, Transport Department (TD), Marine Department (MD) and Television and Entertainment Licensing Authority (TELA). Managers of statutory no smoking areas are also empowered to enforce the ban on smoking. For more effective and better co-ordinated enforcement, Government set up a Tobacco Control Office (TCO) in the Department of Health (DH) in February 2001 to oversee the overall implementation of the Ordinance and co-ordinate efforts among parties concerned (details at Chapter 4).

Publicity and Education

2.4 Publicity and educational programmes have been organised by DH to discourage smoking. They include TV filmclips, radio advertisement, health talks, 24-hour education hotline, pamphlets and booklets with anti-smoking messages.

2.5 In addition, Government has allocated resources to COSH, a subvented statutory body established in 1987 with the enactment of the Hong Kong Council on Smoking and Health Ordinance (Cap. 389). COSH has been organising a variety of public education programmes and campaigns such as no smoking day in workplace, health talks, carnivals, dramas, competitions and exhibitions.

Taxation on Tobacco

2.6 Over the years, Government has increased tobacco tax to discourage tobacco consumption and thus reduce the number of smokers. At present, cigarettes are taxed at $804 per 1000 sticks or slightly over $16 per packet of 20 sticks. This duty is about half of the retail price of a packet of cigarettes. Cigars are taxed at $1,035 per kilogram.

PART II OF THE ORDINANCE

2.7 Part II of the Smoking (Public Health) Ordinance provides for the designation of no smoking areas in public places and on public transport carriers, the prohibition of smoking therein, the display and maintenance of prescribed signs and the penalties for non-compliance. A summary of the relevant sections and the penalties for non-compliance is at **Annex I.**

2.8 There are four Schedules (at **Annex II**) to the Ordinance -

Schedule 1 public transport carriers where smoking is prohibited :

public buses, public light buses, taxis, Mass Transit Railway (MTR), Kowloon-Canton Railway (KCR), Light Rail, trams, peak trams and public ferries.

Schedule 2 — indoor public places where smoking is prohibited :

cinemas, theatres, concert halls, public lifts, amusement game centres, supermarkets, banks, department stores and shopping malls.

Schedule 3 — agencies authorised to designate no smoking areas :

the Airport Authority (AA) designating the passenger terminal complex of the Airport as no smoking area.

Schedule 4 — premises whose managers may designate no smoking areas :

restaurants (with less than 200 seats), schools, tertiary education institutes, universities and the Hong Kong Academy for Performing Arts (HKAPA).

Under section 16A of the Ordinance, SHW may by order published in the Gazette amend these Schedules.

OTHER LEGISLATION WITH NO SMOKING PROVISIONS

2.9 Besides the Ordinance, other legislation also contains provisions which prohibit smoking. Some public transport companies such as Mass Transit Railway Corporation

Limited (MTRCL) and Kowloon-Canton Railway Corporation (KCRC) and statutory organisations such as Airport Authority (AA) and Hospital Authority (HA) have their own by-laws to prohibit smoking in their premises. A sample of such provisions and the penalties for non-compliance is summarised at **Annex III**.

2.10 There is yet further legislation with provisions banning smoking, but for different reasons. For example, the Dangerous Goods (General) Regulations (Cap. 295B), for fire safety, prohibit smoking in dangerous goods stores. The Factories and Industrial Undertakings (Dry Batteries) Regulations (Cap. 59P), for occupational safety, ban smoking in workshops where dry batteries are manufactured. Such legislation is not directly relevant to our investigation.

3

ENFORCEMENT MECHANISM AND ACTION

PROHIBITION OF SMOKING IN STATUTORY NO SMOKING AREAS

3.1 Sections 3(2) and 4(1) of the Ordinance provide for the prohibition of smoking in designated no smoking areas and public transport carriers respectively. Any person who does not comply with either of these provisions commits an offence and is liable on summary conviction to a fine of $5,000. The managers[1] of no smoking areas and public transport carriers and their authorised staff (hereinafter referred to collectively as venue management) as well as the Police are responsible for enforcing the ban on smoking. Administratively, a host of Government departments assists in enforcement, as explained below.

Enforcement by Venue Management

3.2 Sections 3(3) and 4(2) of the Ordinance empower venue management to enforce the ban on smoking in their premises. These powers include requiring the offender to -

(a) extinguish the lighted cigarette, cigar

[1] The word "manager" used in this investigation report has the same meaning as defined in section 2 of the Ordinance, extracted at Annex XIV.

or pipe;

(b) give his name and address and to produce proof of identity if he fails to comply with the request at (a); and

(c) remove him from the venue by the use of reasonable force if necessary and detain him and call for the assistance of the Police if he fails to comply with the request at (b).

3.3 Any person who fails to give his name and address or to produce proof of identity when required to do so under (b) above or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a maximum fine of $10,000. The Ordinance, however, does not specify what follow-up action should be taken by venue management after obtaining such data. Administratively, venue management may choose to report the offence with the personal particulars of the offender to the relevant Government departments for taking summons action. They are, however, not required by the Ordinance to do so.

3.4 On three occasions (February 1983, November 1986 and June 1992), HWB issued circular letters to advise venue management that such cases should be reported to the relevant Government departments. A copy of HWB's circular letter issued in June 1992, with a list of relevant departments annexed, is at **Annex IV(a)**. An Information Form (HW5), at **Annex IV(b)**, to be used for reporting such cases was also issued

to venue management. For example, the circular letter of June 1992 advised that responsible officials of public ferry companies should, after obtaining the personal particulars of an unco-operative person found smoking on board a public ferry vessel, complete an Information Form and report to MD for summons action against the offender.

3.5 However, when HWB issued similar circular letters in April 1998 to supermarkets, banks, department stores and shopping malls and in June 1999 to restaurants with more than 200 seats shortly before statutory no smoking areas were extended to these venues, venue management was merely advised to seek Police assistance if necessary. Unlike the one issued earlier (para. 3.4), these later circular letters made no mention of reporting procedures, report form or the relevant Government departments. A copy of such circular letter issued in June 1999 to restaurants is at **Annex V**.

3.6 It should also be noted that failure of venue management to exercise the powers described in para. 3.2 above, whether deliberately or not, is not an offence. In other words, venue management, though empowered, is not obliged by law to enforce the ban on smoking and will not be criminally sanctioned for such failure.

Enforcement by Police

3.7 The Police may enforce the ban on smoking by -

(a) responding to a call for assistance from venue management in a situation where an

offender refuses or is unable to produce proof of identity[1];

(b) serving a verbal warning on the offender if and when they come across such offence in the course of their normal duty and taking prosecution action if due warning is disregarded; and

(c) taking summons action against the offender upon receipt of a report on the smoking offence lodged by venue management (para. 3.3).

3.8 In regard to (a), if the offender subsequently produces proof of identity to the police officer arriving at the scene, venue management may proceed in accordance with the reporting procedures outlined at paras. 3.3 and 3.4. Under such circumstances, no further Police action is required. However, if the offender still refuses or is unable to produce proof of identity, the Police may have to invoke their power to arrest the person involved.

3.9 In regard to (c), upon receipt of reports lodged by venue management, the Police would examine the information provided. If the information is sufficient to establish a *prima facie* case, the Police will institute summons procedures to prosecute the offender.

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[1] The Police can demand proof of identity from a person suspected of having committed an offence for inspection under section 54 of the Police Force Ordinance (Cap. 232). The offender is liable to be arrested by the Police if he refuses or is unable to do so.

3.10 Between July 1997 and June 2000, the Police have instituted 14,632 prosecutions, resulting in 10,114 convictions for offences under sections 3(2) and 4(1) of the Ordinance. Police enforcement statistics are tabulated below -

<u>Amusement game centres</u> (section 3(2))

	<u>1997</u> (Jul to Dec)	<u>1998</u>	<u>1999</u>	<u>2000</u> (Jan to Jun)
Prosecution	2,373	4,937	5,078	2,157
Conviction	2,071	3,359	3,527	1,075

<u>Public lifts</u> (section 3(2))

	<u>1997</u> (Jul to Dec)	<u>1998</u>	<u>1999</u>	<u>2000</u> (Jan to Jun)
Prosecution	0	3	4	1
Conviction	0	2	4	1

<u>Public Land Transportation other than MTR, KCR and Light Rail</u> (section 4(1))

	<u>1997</u> (Jul to Dec)	<u>1998</u>	<u>1999</u>	<u>2000</u> (Jan to Jun)
Prosecution	5	69	5	0
Conviction	3	69	3	0

[Source : Health and Welfare Bureau]

Police enforcement results from routine patrolling of amusement game centres mainly to contain crime.

Enforcement by Other Departments

3.11 The Government departments listed at **Annex VI** assist in enforcing the ban on smoking upon receipt of reports lodged by venue management. Where the information establishes a *prima facie* case, these departments will institute summons procedures to prosecute the offender. They are usually the licensing authorities for the venues concerned. However, there are exceptions such as FEHD which, though the authority for restaurant licensing, is not responsible for taking summons actions against smoking offences in restaurants.

3.12 It should also be noted that these departments act only on reports by venue management. Due to resource constraints, they do not actively patrol statutory no smoking areas to detect smoking offences.

3.13 Between 1997 and 2000, MD instituted 3,329 prosecutions based on reports by public ferry companies. These have resulted in 2,769 convictions for offences under section 4(1) of the Ordinance. MD enforcement statistics are tabulated below -

Sea Transportation (section 4(1))

	1997	1998	1999	2000
Prosecution	1,288	1,327	706	8
Conviction	1,110	1,084	570	5

[Source : Health and Welfare Bureau]

HWB has advised that other departments have not received any reports from venue management and therefore have not instituted any prosecutions for the same period.

DESIGNATION OF NO SMOKING AREAS AND DISPLAY OF PRESCRIBED SIGNS

Restaurants with more than 200 seats

3.14 From July 1999, managers of restaurants with indoor seating accommodation of more than 200 persons, excluding that used exclusively for a private event and separated by full-height partition, are required to observe sections 3(1C), 5 and 6A of the Ordinance, as follows -

Section 3(1C) : to designate not less than one-third of the area as a no smoking area.

Section 5 : to place and to maintain in good order and legible condition in each no smoking area sufficient no smoking signs.

Section 6A : to display and to maintain in good condition a sign visible from outside the restaurant indicating whether no smoking seating is available.

The format and size of the signs for sections 5 and 6A are prescribed by the Smoking (Public Health)(Notices) Order. Failure to comply is an offence, liable on summary conviction to a fine of $25,000. As at the end of 2000, there were about 9,300 licensed restaurants, 720 of which have more than 200 seats.

3.15 Before the ban on smoking was extended to restaurants, HWB had reached an agreement with the two former municipal services departments (succeeded by FEHD since 1 January 2000) that their staff would, during their routine hygiene inspections, check whether restaurants have complied with the requirements in sections 3(1C), 5 and 6A of the Ordinance. If non-compliance is detected, FEHD officers would issue first verbal and then written warning if the former was ignored. A sample of the warning letter issued by FEHD on behalf of HWB is at **Annex VII**. Thereafter, FEHD officers will conduct further visits to such restaurants to check if the discrepancies have been rectified. If not, the case would be reported to HWB to consider prosecution action.

3.16 From July 1999 to September 2001, FEHD officers issued 154 verbal and 8 written warnings to restaurants. A table with statistics on FEHD warnings served on behalf of HWB is at **Annex VIII**. According to FEHD, all such restaurants had rectified the discrepancies upon receipt of the warnings

and there was no need to refer any case to HWB.

3.17 FEHD also takes actions in response to smoking-related complaints against restaurants. In 1999 and 2000, FEHD received 75 such complaints -

- 41 on designation of no smoking areas;
- 23 on display of prescribed signs; and
- 11 on smoking in no smoking areas.

FEHD follow-up action can be summarised as follows : on receipt of the first two types of complaint, FEHD will first conduct a record check to see if the restaurant under complaint is licensed to provide more than 200 seating accommodation. If confirmed, a site visit will follow. If the complaint is substantiated, FEHD staff will serve verbal warning, written warning or report to HWB as appropriate (para. 3.15). On receipt of complaints on smoking, FEHD staff will remind restaurant management to take enforcement action under section 3(3) of the Ordinance.

Other Venues

3.18 The managers of other designated venues are also required under section 5 to place and to maintain in good order in each no smoking area a sufficient number of no smoking signs in the prescribed format. According to established areas of responsibilities, TD checks whether no smoking signs are displayed in taxis, public light buses and public buses during their annual vehicle examinations; MD checks public ferry vessels during their annual survey inspections; FEHD checks

cinemas, theatres and concert halls during their routine inspections; TELA checks amusement game centres during their routine inspections; the Electrical and Mechanical Services Department (EMSD) asks registered lift contractors to check, during their annual safety inspections, whether no smoking signs are displayed in public lifts. A list of no smoking venues and the Government departments responsible for checking the display of no smoking signs in these venues is at **Annex IX**.

3.19 When officers or agents of these departments come across non-compliance cases, they will in the first instance advise venue management to put up the requisite signs. According to HWB, there has so far been no need for prosecution as those failing to display no smoking signs have always promptly acted on the advice.

VOLUNTARY DESIGNATION OF NO SMOKING AREAS

3.20 Sections 3(1A) and 3(1B) of the Ordinance provide that the manager of each agency specified in Schedule 3 and each venue specified in Schedule 4 may designate any areas and premises, or part thereof, under their control as no smoking areas. For instance, the voluntary ban on smoking has been extended to the passenger terminal complex of the Airport under section 3(1A) and to restaurants with less than 200 seats, schools, post-secondary colleges and educational institutes, universities and HKAPA under section 3(1B). Shortly before these provisions came into effect in April 1998, HWB had written to the restaurant owners association, the Education

and Manpower Bureau (EMB) and HKAPA respectively drawing their attention to the operation of the provisions and, where appropriate, asking them to convey the message to their members and staff. In response, some restaurants and most of the schools and educational institutions covered by Schedule 4 have taken part in the voluntary ban.

3.21 Once the managers of these premises have decided to designate the whole premises or part thereof as no smoking areas, they should arrange for no smoking signs to be properly displayed. Thereafter, they would have the same powers to enforce the ban in their venues pursuant to sections 3(3) and 4(2) of the Ordinance.

RELATED ACTIVITIES

3.22 Other enforcement-related activities include publicity and public education on the requirements of the Ordinance, co-ordination and evaluation of enforcement activities and collation and analysis of enforcement statistics. These activities are outlined below.

Publicity and Public Education

3.23 Before the operation of significant amendments to the Ordinance, HWB would make media announcements to inform the general public and circular letters to remind the relevant venue management. The Bureau would also arrange with the Information Services Department (ISD) to produce and broadcast Announcements of Public Interest (APIs) on TV and

radio.

3.24 COSH has also been organising publicity and educational activities including the production of APIs, leaflets and posters to remind the public of the legal requirements. Since July 1998, COSH has been operating an Information Hotline 2838 3266, *inter alia*, to disseminate information on the anti-smoking legislation and to receive smoking-related complaints. In July 1999, shortly before statutory no smoking areas were extended to restaurants with more than 200 seats, COSH in conjunction with HWB organised two seminars to explain the legal requirements to restaurant representatives. The two seminars were attended by over 400 people.

Co-ordination and Evaluation of Enforcement Activities

3.25 HWB, as the policy bureau on tobacco control, is responsible for co-ordinating enforcement activities and evaluating their effectiveness. With the enactment of the Ordinance in July 1982, HWB set up an inter-departmental working group in February 1983 to monitor the efficiency of the enforcement procedures and to examine possible alternatives. The working group was chaired by a Principal Assistant Secretary in HWB and consisted of representatives from the Police, TD, MD, EMSD, ISD, the then Urban Services Department (USD) and the then Legal Department. It served as a forum for exchange of views on problems in the enforcement of the Ordinance. The working group held four meetings between May 1983 and January 1985.

Collation and Analysis of Statistics

3.26 Responsible for collating and analysing enforcement statistics, HWB regularly captures prosecution and conviction statistics of smoking offences from the "Caseman" computer system[1] managed by the Judiciary. It also receives bi-monthly reports from FEHD on verbal and written warnings issued to restaurants (para. 3.15).

COMPLIANCE

3.27 HWB considers the level of compliance with the requirements under Part II to be generally satisfactory in most venues except shopping malls and restaurants. Accordingly, in February 2000 the Bureau issued a circular letter to the management of shopping malls and department stores to remind them of the legal requirements and to give practical tips for compliance. A copy of the circular letter is at **Annex X**. However, similar reminders were not sent to restaurant managers or owners.

3.28 COSH also receives public complaints related to smoking through its Information Hotline. Statistics on such complaints in 1999/2000 and 2000/01 are tabulated below -

[1] The "Caseman" computer system provides administrative and record keeping functions for the nine magistrates' courts of the Judiciary. One of the functions is to automate the application by some 40 prosecution agencies in various Government departments and non-Government organisations and the issue by the magistrates' courts of summonses and notices.

1999/2000

	Restaurants (Note 1)	Other venues	Total
Smoking in designated no smoking areas	224	83	307
Inadequate no smoking signages	23	1	24
Lack of enforcement action	218	92	310
Total	465	176	641

2000/2001

	Restaurants (Note 1)	Shopping malls, banks, supermarkets, department stores	Other venues (Note 2)	Total
Smoking in designated no smoking areas	474	174	297	945
Inadequate no smoking areas provided	232	-	-	232
Inadequate no smoking signages	44	1	0	45
Lack of enforcement action	182	112	187	481
Miscellaneous	45	0	0	45
Total	977	287	484	1,748

Note 1 : Restaurants with more than 200 seats

Note 2 : Public transportation, ferry, lifts and hospitals

[Source : COSH Annual Reports for 1999/2000 and 2000/2001]

Complaints related to restaurants topped all venues, being 465 in 1999/2000 and doubled to 977 in 2000/01. Unfortunately, complaint statistics on other venues are not separately identified and comparative analysis has not been possible.

3.29 HWB attributes the unsatisfactory level of compliance in restaurants to –

(a) the reluctance on the part of restaurant managers and staff to take enforcement action for fear of offending customers; and

(b) technical problems in meeting the legal requirement of designating at least one-third of the area for no smoking in a restaurant with more than 200 seats.

3.30 To counteract (a), HWB advises this Office that TCO, set up under DH since February 2001, has been providing advice and guidance to restaurant management for compliance (para. 4.2 below). In regard to (b), HWB explains that restaurants may need to change their seating arrangements frequently to cater for the requirements of different banquets. The legal requirements exclude areas used exclusively for private events and separated by full height partitions. Thus the location and size of the no smoking areas may have to be changed from time to time. This has caused confusion to members of the public and operational problems for restaurant management. In addition, cigarette smoke can diffuse from smoking area to no smoking area. This in effect defeats the purpose of

protecting non-smokers sitting in no smoking areas from passive smoking. To overcome these problems, the Bureau has proposed in the consultation document that smoking be banned in all restaurants, irrespective of size and capacity (para. 4.9(b) below).

ENFORCEMENT OF OTHER LEGISLATION WITH NO SMOKING PROVISIONS

3.31 Besides Cap. 371, other regulations and by-laws contain no smoking provisions (para. 2.9). The Ferry Services Regulations made under the Ferry Services Ordinance (Cap. 104) are enforced by TD. The regulations governing the use of civic centres, public libraries, public museums and public swimming pools made under the Public Health and Municipal Services Ordinance (Cap. 132) are enforced by LCSD while the Education Regulations made under the Education Ordinance (Cap. 279) are enforced by ED. Similarly, Star Ferry, Peak Tramway, MTRCL, KCRC, HA and AA are empowered under their respective by-laws to prosecute persons in breach.

3.32 MTRCL and KCRC have set up their own dedicated By-law Enforcement Teams to enforce their respective by-laws, smoking offences included. Unlike Cap. 371 which only prohibits smoking on trains, the by-laws of MTRCL and KCRC cover other parts of the railway premises (e.g. stations) where smoking is prohibited by notice. These by-laws provide for additional powers for their staff, such as the power of arrest, not available under Cap. 371. Furthermore, there is no need under their by-laws to issue warning before prosecution. The two railway companies have their own

prosecution units and there is no need to seek assistance from Government departments. For these reasons, both companies prefer to enforce the ban on smoking under their own by-laws and not resort to Cap. 371.

3.33 Government departments and organisations other than MTRCL and KCRC do not have dedicated enforcement teams. When their staff come across persons smoking in breach of the law, they usually just request the offenders to stop smoking.

3.34 Enforcement statistics in respect of smoking offences under these regulations and by-laws are tabulated below -

Hospitals (Bylaw 7(1)(b), Hospital Authority Bylaws (Cap 113A))

	1998	1999	2000
Prosecution	0	2	4
Conviction	0	1	1

MTR (Bylaw 23, Mass Transit Railway By-laws (Cap 556B))

	1995	1996	1997	1998	1999	2000
Prosecution	15	12	26	18	14	7
Conviction	8	12	21	15	7	6

KCR (Bylaw 54, Kowloon-Canton Railway Corporation By-laws (Cap 372B))

	1995	1996	1997	1998	1999	2000
Prosecution	1,190	1,112	821	172	55	50
Conviction	733	629	520	136	14	23

Light Rail (Bylaw 54, Kowloon-Canton Railway Corporation By-laws (Cap372B))

	1995	1996	1997	1998	1999	2000
Prosecution	4	17	11	5	5	0
Conviction	4	14	9	3	3	0

[Source : Health and Welfare Bureau]

From 1995 to 2000, there have been 92 and 3,442 prosecutions for smoking offences made under the MTR and KCR By-laws respectively.

4

IMPROVEMENT MEASURES

TOBACCO CONTROL OFFICE

Functions

4.1 To better co-ordinate anti-smoking efforts, Government set up TCO under DH in February 2001. Headed by a Senior Medical and Health Officer assisted by a Nursing Officer, three Tobacco Control Officers, three Assistant Tobacco Control Officers and two clerks, TCO mainly carries out the following functions.-

(a) to educate and assist managers and staff of public premises to comply with and enforce the Ordinance;

(b) to screen printed publications for illegal tobacco advertisement;

(c) to inspect tobacco retailers for illegal tobacco advertisement, improper health warnings and signage;

(d) to conduct anti-smoking health education and activities;

(e) to enhance DH's smoking cessation service; and

(f) to assist HWB in reviewing tobacco control policy and legislation.

4.2 TCO officers visit relevant venues to educate managers and their staff on how to comply with and enforce the law, handle unco-operative smokers and deal with complaints. They would also listen to their concerns and difficulties. They have been visiting restaurants with more than 200 seats and plan to visit shopping malls and other venues later. During these visits, they distributed an education package which included no smoking posters, notices, signs and information pamphlets. A copy each of TCO's information pamphlets for managers of restaurants and shopping malls are at **Annexes XI(a) and XI(b)** respectively. However, TCO's role is to advise and not to sanction offenders.

4.3 TCO has produced an API which encourages the public to exercise their rights to smoke-free environment. The API has been broadcasted in all television channels since February 2001. TCO also operates an enquiry hotline 2961 8823 for venue management and the public. Besides enquiries, the hotline also handles complaints related to the enforcement of the Ordinance. From February to August 2001, TCO received 48 complaints via the hotline : 38 related to illegal smoking in no smoking areas and ten to the absence of no smoking areas in restaurants. A breakdown is given below -

Complaints against people smoking in no smoking areas

Venue	No. of Complaints
Restaurant	18
Shopping mall	15
Lift	2
Ferry	2
Bus	1
Total	38

Complaints concerning lack of no smoking areas

Venue	No. of Complaints
Restaurant	10

[Source : Tobacco Control Office, Department of Health]

4.4 With the first type of complaints, as the smokers had left the scene by the time TCO officers arrived, these officers could only advise venue management on ways to enforce the law effectively. In handling complaints alleging the lack of no smoking areas in restaurants, TCO officers would visit the restaurants unannounced, to verify the initial information from the complainant. Of the ten such complaints, nine were substantiated after investigation. Under these circumstances, TCO officers would explain the legal requirements to the restaurant managers and advise them on compliance. They would revisit the restaurants later, to check whether the situation has been rectified. It is understood that restaurant managers on the whole co-operate and so it has not been necessary for Government to prosecute.

4.5 For health education, TCO Smoke-free Ambassadors provide health information to members of the public through roving exhibitions at shopping malls and other public places.

Compliance Surveys by TCO

4.6 Before TCO was established, DH conducted a baseline survey between November and December 2000 to find the extent to which managers of restaurants with more than 200 seats were aware of the provisions in the Ordinance relevant to their operation, their attitude towards the law and their level of compliance. 215 restaurants were selected at random and 205 of them were successfully visited. The findings from the survey are detailed at **Annex XII.** In brief, the survey revealed the following situation -

- 17 (8.3%) restaurants did not have any no smoking areas as required by the Ordinance;

- Among the 188 (205-17) restaurants with no smoking area, 82 (43.6%) have no smoking areas less than one-third of the restaurant seating accommodation;

- 41 (21.8%) did not display any no smoking signs; and

- 46 (24.5%) restaurants did not display the "no-smoking seating available" sign at the entrance.

4.7 After establishment, TCO staff visited 421 restaurants with more than 200 seats from February to June 2001 and found out that -

- 34 (8.1%) restaurants did not have any no smoking areas as required by the Ordinance;

- Among the 387 (421-34) restaurants with no smoking area, 166 (42.9%) have no smoking areas less than one-third of the restaurant seating accommodation;

- 210 (54.3%) did not display sufficient no smoking signs;

- 126 (29.9%) restaurants did not display the "no-smoking seating available" sign at the entrance; and

- Among the 295 (421-126) restaurants with the "No Smoking Seating Available" signs displayed at their entrance, 55 (18.6%) did not meet the format or size prescribed by the Ordinance.

4.8 These findings indicated that there has been considerable non-compliance despite the regular checks conducted by FEHD since July 1999 (para. 3.15).

PROPOSED AMENDMENTS TO THE ORDINANCE

4.9 To strengthen the existing tobacco control framework, HWB proposed a series of legislative amendments in June 2001 in its public consultation document. The main proposals relevant to this investigation include -

(a) extension of the statutory ban on smoking, as a first step, to bars, karaokes, schools, universities, tertiary educational institutions and all indoor workplaces with a long-term objective to further extend the ban to other public indoor premises such as bathhouses, nightclubs and mahjong places;

(b) introduction of a complete ban on all restaurants, regardless of their size and seating capacity; and

(c) conferment of powers on TCO to take direct prosecution action against 13 offences in the Ordinance, two of which fall under Part II.

4.10 Proposal (b) is Government's acknowledgement of the considerable difficulties in enforcing the partial ban in restaurants with more than 200 seats (paras. 3.29 and 3.30). A complete ban makes for easier enforcement and greater awareness.

4.11 On proposal (c), TCO staff are to be authorised to take prosecution action against failure to display no smoking signs (section 5) and "no-smoking seating available" signs (section 6A). Prosecution against persons smoking in no smoking venues (sections 3(2)and 4(1)) is not included.

4.12 Public consultation ended in late September 2001 with HWB receiving more than 10,000 written submissions and 180,000 signatures. HWB's preliminary analysis shows that the majority of the general public support the extension of the ban to restaurants, schools and indoor workplaces. However, views on a ban on smoking in bars and karaokes were mixed.

4.13 Most people support the delegation of authority to TCO officers to facilitate discharge of their duties. Some consider the current enforcement of the ban inadequate and have suggested the following measures for better enforcement -

(a) involve more Government departments in enforcement;

(b) impose heavier fines and penalties on those violating the ban on smoking;

(c) prosecute offenders by fixed penalty tickets; and

(d) set up a hotline for public reports of smoking offences.

HWB is in the process of collating and considering the comments and suggestions from consultation.

5

COMMUNITY SENTIMENTS

BACKGROUND

5.1 HWB consultation document has raised community concern and sparked off heated public debate. Such public concern and opinions, as they relate to this direct investigation, are summarised below.

PUBLIC OPINION SURVEY

5.2 To gauge public opinion on the proposals in the consultation document, HWB commissioned a local university to conduct a public opinion survey in late July 2001. The survey interviewed 1,017 randomly selected respondents who are Cantonese-speakers aged 15 and above. The survey results suggest that most people support a ban on smoking in indoor public places and are aware of the harmful effects of passive smoking to health. The major findings from the survey relevant to this investigation are outlined below -

(a) 81.6% and 88.1% of the respondents agreed with the proposal to prohibit smoking in all restaurants and indoor workplaces;

(b) 98.1% agreed with the proposal to prohibit smoking in all kindergartens, primary and secondary schools and 92.9% agreed with the proposal to prohibit smoking in indoor premises of universities and tertiary educational institutions;

(c) 60.4% and 51.4% agreed that smoking should be prohibited in all karaokes and bars respectively while 18.9% and 23.8% disagreed;

(d) 82.1% believed that the proposal to prohibit smoking in all restaurants could help protect public health;

(e) 92.1% believed that smoking is hazardous to the smokers' health while 91.5% believed that passive smoking is hazardous to health; and

(f) 44.1% would choose an entirely smoke-free restaurant for dining and 28.9% a restaurant with a no smoking area. 26.1% had no preference while only 1% would choose a restaurant without no smoking arrangement.

COSH

5.3 Prior to publication of the HWB consultation document, COSH had already reviewed the implementation of the Ordinance. In a report issued in November 2000, COSH observed that Government had not been active in identifying non-compliance cases and taking enforcement action. In its opinion, too many departments were involved in enforcement, with each being responsible only for a small fraction. These arrangements had led to ineffectual prosecution of offences. Resource constraints of these departments also undermined their capability for appropriate and effective enforcement action. COSH, therefore, saw the need for some successful prosecution to achieve a proper deterrent effect.

5.4 To strengthen enforcement, COSH suggested that Government should -

(a) establish a dedicated inspection team for visiting black spots regularly;

(b) empower the inspection team to institute direct prosecution action against offenders;

(c) involve the Police more closely in the enforcement of the ban on smoking; and

(d) streamline the reporting and legal procedures, which should be publicised to parties concerned.

5.5 COSH also suggested that Government should assign the overall responsibility for enforcing the Ordinance to one specific lead department, whose main functions would be to develop a more systematic and workable enforcement mechanism, to co-ordinate enforcement and prosecution matters with other Government departments and to monitor their effectiveness.

5.6 In response to the recent consultation document, COSH has submitted its views to HWB with a copy to this Office. In the submission, COSH has indicated support for the proposal to extend statutory no smoking areas to all restaurants, bars, karaokes, educational institutions and indoor workplaces, without exemptions or exceptions. Nevertheless, it has serious concern over the lack of effective enforcement action as the extension of no smoking areas to other public places might create even further enforcement problems. It considers Government's dependence on venue management as the frontline enforcement agency to have been ineffective, mainly because it is not supported by prosecution action. Smokers have not been deterred from committing the offence and the law is regarded as having no "teeth".

5.7 On proactive enforcement action, COSH considers it important that the Police should prosecute offenders, at least periodically, to demonstrate Government's determination to enforce the law and to protect public health. It welcomes Government's proposal to strengthen the role of TCO by conferring on their officers proper authority to prosecute and hopes that TCO can assume the role of co-ordinating and liaising with the enforcement agencies concerned for proper

legal sanction against offenders.

CONCERN GROUPS

5.8 To protect public health, health professional bodies have expressed strong support for Government's proposals. They have joined forces with COSH, patients' groups, women's groups and sports associations to publish open letters in support of Government's proposals.

CATERING AND ENTERTAINMENT INDUSTRIES

5.9 Many operators in the catering and entertainment industries have expressed worries that the proposed complete ban on smoking in all restaurants, bars and karaokes might reduce business and have therefore opposed the proposal. In early October 2001, they staged a protest to express their objection and to call for cancellation of the provision requiring venue management to enforce the ban. In their opinion, this provision had led to conflict among venue staff and customers which, at times, was described as serious enough to jeopardise their personal safety.

SUBMISSIONS TO THIS OFFICE

5.10 Apart from COSH, the Asian Consultancy on Tobacco Control has also addressed this Office. It considers that as with all public health and safety laws, prosecution and fines

have their place in law enforcement, especially in the early stage of implementation. It favours adopting a more robust practice regarding non-compliant smokers. The Police should provide full support to venue management by following up and prosecuting all complaints received. It also suggests that the Police set up a task force specifically to enforce the ban. Members of the task force should include representatives of venue management and health authorities.

6

OBSERVATIONS AND OPINIONS

INTRODUCTION

6.1 Enforcement action in the context of this investigation report includes the following activities -

(a) patrol and inspection of no smoking areas and detection of offences under Part II of the Ordinance;

(b) handling of reports on violation of the provisions under Part II of the Ordinance;

(c) issue of advice and warnings or prosecution for failure to comply with the provisions under Part II of the Ordinance; and

(d) associated activities to publicise the legal requirements and educate the public and venue management, to co-ordinate and evaluate enforcement efforts and to collate and analyse enforcement statistics.

INADEQUACIES OF ENFORCEMENT ACTION AND MECHANISM

6.2 This Office has noted inadequacies in Government's enforcement action and mechanism. Some examples are given below.

Omission of Reporting Procedures

6.3 In June 1992, HWB issued a circular letter to venue management which stated, *inter alia*, "The manager or person-in-charge **should** file a report with the relevant Government department in respect of any offender whose name and address have been taken [in accordance with sections 3(3) or 4(2) of the Ordinance] so that summons action can be taken by the Police or the department concerned" (para. 10 of Annex IV(a)). During the course of investigation, HWB has, however, come up with the view which essentially states, "Having collected the personal particulars of the offender, the management staff of the premises or public transport carrier **may**, at his discretion, pass the information to the department concerned for further actions". HWB further admits that "There is no strict guideline for them [venue management] to report the information to a particular department. Rather, the information may be referred to the department they consider appropriate".

6.4 When HWB issued similar circular letters to banks, supermarkets, department stores and shopping malls in April 1998 and to restaurants with more than 200 seats in June 1999 shortly before they became statutory no smoking venues, the

circular letters made no mention of procedures for reporting smoking offences. The management of these venues were merely advised to approach the Police direct for assistance, if necessary. In defending the "omission" of reporting procedures, HWB has explained that the Government departments (Appendix B to Annex IV(a)) named in the circular letter of June 1992 were primarily themselves the licensing authorities for the venues concerned. However, there were no equivalent departments for banks, supermarkets, department stores and shopping malls. As for restaurants, although FEHD is the licensing authority, it is not responsible for handling reports on smoking offences. Nevertheless, these venues may still report smoking offences to the Police.

6.5 This explanation is unacceptable. Venue management should be clearly informed and guided on reporting procedures, including advice on the Government department(s) for follow-up liaison or action. The Police, with their public duty for crime, can always be the last resort but should not have to serve as first call. Current practice has been that when the Police is called in to assist, if the offender then co-operates by providing proof of identity and other personal particulars, the information is passed on to the venue management for follow-up action (para. 3.8). The problem then surfaces as to how, and to whom, the venue management should report the offence. This is not at all satisfactory : a waste of Police efforts and loss of opportunities for deterrence.

Scrapping the Information Form

6.6 HWB discontinued the use of the Information Form in May 1998. HWB has explained that in April 1998 it had consulted the Police on the frequency of use of the Form. The Police advised that they had not received any such form from venue management in 1996 and 1997 and suggested that its use be discontinued. Accordingly, HWB decided that the Form be cancelled. The Bureau has argued that while the Form facilitates reporting, venue management can always report smoking offences without it. On our further inquiry, HWB has advised that the Police and the departments concerned would require considerably more information for summons action to proceed : e.g. the personal particulars of the offender, the staff or witness(es) reporting the case and details of the offence including the date, time, place, circumstances of the offence(s) committed.

6.7 This is a flimsy and ambivalent excuse. Firstly, in deciding to discontinue the use of the Information Form in May 1998, HWB had overlooked the significant fact that MD alone had instituted 1,288 and 1,327 prosecutions in 1997 and 1988 respectively (para. 3.13) based on completed Information Forms (slightly modified by MD to be more user-friendly) submitted by ferry companies. Secondly, as the Police and relevant departments require a lot of details to take summons action, informants would find it inconvenient to report smoking offences without the Form. Thirdly, the infrequent use of the Form might well have been the result of insufficient awareness of its existence from lack of publicity to promote its use since June 1992. Furthermore, HWB does not seem to

have consulted other departments (other than the Police) before deciding to discontinue its use.

Failure to Remind Restaurant Management

6.8 In the light of unsatisfactory compliance of the ban on smoking in shopping malls and departments stores, HWB issued a circular letter in February 2000 to the management of shopping malls and department stores urging them to comply with the legal requirements and providing them with practical tips for more satisfactory compliance (para. 3.27). In view of the considerable number of non-compliance cases detected by FEHD (paras. 3.16 and 3.17) and complaints received by COSH alleging smoking-related offences in restaurants (para. 3.28), HWB could have taken remedial action such as issuing similar reminders to restaurant management or re-constructing appropriate procedures for follow-up action. However, this was not done. Although TCO has been visiting restaurants to educate their management on ways and means to enforce the relevant provisions in the Ordinance since its establishment in February 2001, this was already 19 months after the extension of the ban to restaurants.

Inadequate Guidelines and Procedures

6.9 This Office has also examined the information pamphlets produced by TCO (para. 4.2 and Annex XI) to see if they contain sufficient guidelines and detailed procedures to assist venue management in enforcing the ban. To our disappointment, the pamphlets merely re-state the legal requirements and the powers conferred on venue management.

They offer little specific guidance or advice on procedures to be followed, in particular on such matters as -

(a) the need to remove ashtrays located in no smoking areas;

(b) dealing with smoking-related complaints lodged by customers;

(c) reporting of smoking offences after obtaining the personal particulars of unco-operative smokers; and

(d) the need to issue written instructions to staff and to brief them regularly.

6.10 HWB has responded that some of these points have been verbally relayed and explained to venue management during the TCO visits. However, it accepts that guidelines on how to enforce the law and follow up on cases of contravention could be developed to facilitate venue management discharging their statutory duties.

Inadequate Publicity and Education

6.11 The restaurant baseline survey carried out by DH in late 2000 (para. 4.6 and Annex XII) revealed that knowledge of the legal requirements among restaurant managers is patchy and inadequate. We understand that TCO has, since its establishment in February 2001, been providing relevant education and guidance to restaurant management. However,

these efforts need to be enhanced.

Different Enforcement Procedures and Practices in FEHD

6.12 It has come to our notice that the former USD had as early as 1983 agreed to be responsible for taking summons action against persons found smoking in cinemas, theatres and concert halls, as and when venue management reported such offences to the department. USD officers at Chief Health Inspector and Senior Health Inspector rank were authorised by the then Crown Prosecutor to lay information before a magistrate and to act as public prosecutors in a magistrate's court for charges brought under Part II of the Ordinance. This responsibility has been taken over by FEHD when municipal services were reconstituted in January 2000[1].

6.13 However, when the ban on smoking was extended in July 1999 to restaurants with more than 200 seats, the then USD agreed only to assist in the enforcement of sections 3(1C), 5 and 6A by conducting additional checks during routine inspections and issuing verbal or written warnings on behalf of HWB for non-compliance (para. 3.15). It refused to take up the responsibility for summons action against smoking offences reported by restaurant management or their patrons. This arrangement has continued when FEHD came into operation in January 2000.

6.14 As the then USD, now FEHD, is the licensing authority for restaurants, the refusal to take prosecution

[1] Since January 2000, the Secretary for Home Affairs (SHA) has become the licensing authority of places of public entertainment. Pending the completion of SHA's review of entertainment licensing, FEHD has during the interim period agreed to issue places of public entertainment licences and continue to enforce the Places of Public Entertainment Ordinance (Cap. 172). FEHD staff have also continued to enforce Cap. 371 in these places.

action against smoking offences in restaurants is a departure from the established practice that the Government departments being the licensing authority of the venues concerned assist in enforcing the ban (para. 3.11). This Office has accordingly made enquiries with FEHD and HWB.

6.15 FEHD has attributed the difference in the enforcement procedures and practices to difficulties of the then municipal services departments in coping with the anticipated increase in workload. FEHD emphasises that it is not the designated enforcement authority under the Ordinance and it does not have any dedicated organisational set-up or enforcement teams for carrying out such duties. It also clarifies that the authorisation and appointment by the then Crown Prosecutor (para. 6.12) were meant only to enable the then USD to take summons action against offenders reported by the management of cinemas, theatres and concert halls and did not impose an enforcement duty on the department vis-à-vis smoking offences in restaurants. Moreover, FEHD considers it difficult for staff to have actually witnessed smoking offences being committed during their routine inspections. In addition, it doubts if it would be cost-effective in deploying their health inspectors to take prosecution action for such offences. Lastly, it considers smoking to be a public health issue rather than one concerning food safety and environmental hygiene where the department has an unquestionable mandate under the Public Health and Municipal Services Ordinance (Cap. 132).

6.16 On the other hand, HWB has advised that the possibility of enlisting the assistance of FEHD in prosecution

against persons violating the ban on smoking was raised at a meeting of the Public Health Select Committee of the Provisional Urban Council held in November 1999. At the meeting, USD representatives reiterated that staff were unable to cope with the additional workload and that their scope of work should not cover anti-smoking, which was a public health issue.

6.17 Notwithstanding FEHD's viewpoint, HWB maintains that health and hygiene matters are closely inter-related. This view is shared by DH, which considers environmental hygiene to be an integral part in the whole spectrum of issues dealing with public health. HWB believes that enforcement of the ban in restaurants would be enhanced if FEHD officers, e.g. health inspectors, could take a more active part. However, the Bureau recognises that these issues and the resource implications have to be carefully considered.

6.18 Some Government departments, notably MD, have positively assisted in taking summons action against smokers upon receipt of reports filed by venue management. It could be argued that these duties also fall outside the normal scope of their work. Yet, they have acted commendably. We see no reason why FEHD could not do the same. We consider that FEHD, as the licensing authority for restaurants, has a logical and legitimate duty and the advantage of convenience to assist in action against smokers in no smoking areas of restaurants. As a matter of fact, Cap. 132 and Cap. 371 both deal with matters of concern to public health. We firmly share HWB's view that health and hygiene matters are closely inter-related.

6.19 In view of the vocal public criticism over the current ineffectual ban on smoking in restaurants, HWB must address the problem of enforcement as a matter of urgency : to convince our community of Government's commitment to protect public health and determination to enforce the law. Otherwise, it breeds disrespect for the law and brings Government into disrepute. It is, of course, open to Government not to legislate for anti-smoking : a retrograde step but more pragmatic.

Inconsistent Compliance Checks by FEHD and TCO

6.20 Despite the claim of getting positive results from the additional checks conducted by FEHD officers during their regular inspections of restaurants, the fact is that DH has uncovered many cases of non-compliance both in its baseline survey in late 2000 (para. 4.6) and during TCO inspections from February to June 2001 (para. 4.7). To account for this situation, HWB has suggested that it might be due to FEHD and TCO adopting different criteria and that, to redress, both parties should agree on a uniform set of criteria.

6.21 Despite a large number of cases of non-compliance uncovered by FEHD and TCO (paras. 3.16, 4.6 and 4.7) and complaints received by FEHD, COSH and TCO (paras. 3.17, 3.28 and 4.3), there has been no prosecution since the Ordinance was extended to restaurants in July 1999. HWB does not rule out the possibility of prosecuting restaurants if repeated offences have been reported. This Office questions Government's tolerant approach to these offences, seen by our community as clearly ineffectual. As the legal requirements

have been in force for over two years, Government should review the legislation and revise the approach. Laws are made for enforcement and deterrent; non-enforcement would breed disrespect for the law.

Non-enforcement or Passive Enforcement

6.22 At present, all Government departments concerned with the exception of the Police act only on complaints and reports. Furthermore, they do not prosecute persons found smoking in statutory no smoking areas. For example, FEHD officers who receive complaints on violation during their routine inspections to restaurants would only request restaurant managers to take action under section 3(3) of the Ordinance (para. 3.2).

6.23 HWB has explained that as a large number of venues are involved, proactive enforcement action such as patrol and inspection would require considerable resources. Apparently, HWB considers this neither practical nor cost-effective. It maintains that as responsible venue staff are always at their venues, they should be best placed and empowered to take prompt action against offenders. However, this is not a responsible approach unless venue staff are made properly aware of their statutory duties and are adequately assisted in enforcement. Present Government enforcement action is passive and prosecutions are not targeted against those venues hitherto attracting most complaints.

Gaps and Overlaps in Enforcement

6.24 There are gaps and overlaps in enforcement. For examples -

(a) There is no Government department responsible for checking the display of no smoking signs in supermarkets, banks, department stores and shopping malls.

(b) A number of Government departments and COSH receive and handle smoking-related complaints.

(c) Both FEHD and TCO/DH are involved in checking restaurants with more than 200 seats for compliance.

(d) The Police have concentrated only on prosecuting smokers in amusement game centres, not in such places as shopping malls and banks.

6.25 As regards the gaps in enforcement (para. 6.24(a)), HWB has explained that there are no licensing authorities for supermarkets, banks, department stores and shopping malls or any Government department legally responsible for overseeing their operation. Nevertheless, TCO/DH plans to visit shopping malls at a later stage (para. 4.2).

6.26 As regards the overlaps in handling smoking-related

complaints (para. 6.24(b)), HWB has explained that different follow-up action has been taken by the Government departments concerned and by COSH in response to complaints. For restaurants, FEHD mainly handles complaints regarding non-compliance with designation of no smoking areas and display of prescribed signs. On the other hand, TCO is responsible for handling complaints against restaurant management for not enforcing the ban on smoking while COSH refers all such complaints to the appropriate Government departments for follow-up action. The Police is the only department which takes direct prosecution action against smoking offences under Cap. 371. In view of the different practices amongst the Government departments, TCO has been in discussion with all concerned to identify ways to rationalise and co-ordinate their enforcement efforts.

6.27 As regards the overlaps in the compliance check of restaurants (para. 6.24(c)), HWB has clarified that the focus of TCO's mission is on publicity and education. TCO inspections were meant only to assess the success of its publicity and public education efforts.

6.28 As regards Police involvement (para. 6.24(d)), HWB has explained that the Police are not specifically tasked to patrol statutory no smoking areas. They have discovered such offences during their routine inspection of amusement game centres and taken action.

6.29 Notwithstanding the explanation by HWB, our investigation has found that FEHD has received and handled complaints related to smoking (para. 3.17) while TCO has

received and handled complaints of failure to designate adequate no smoking areas in restaurants (para. 4.3). Contrary to what HWB claims, the division of labour among Government departments is contrived and, in certain areas, confusing. This is not good administration or effective use of resources and goes against Government's trend for a co-ordinated approach. We see a need for review of the division of enforcement responsibilities.

Police

6.30 We note that some public opinions call for more Police involvement in the enforcement of the ban (paras. 5.4 and 5.10). We consider this inappropriate : it is not a proper use of Police manpower. The primary duty of the Police is to fight crime, not to deal with social offence such as illegal smoking. The role of the Police in this case should be incidental to their normal duties and, when called upon, to assist venue management in dealing with difficult offenders.

FEHD

6.31 We agree with Government's general principle that the licensing authorities of the venues concerned are best placed to assist in enforcing the ban on smoking because officers of those departments have to inspect the venues regularly anyway. As we have mentioned earlier, FEHD is a surprising and quite inexplicable exception to this principle (para. 6.18).

6.32 There are venues for which there are no licensing/inspection authorities as such. In these circumstances, we think that TCO/DH instead of the Police should step in.

Inadequate Co-ordination of Enforcement Efforts

6.33 Drawing up appropriate enforcement guidelines and procedures for venue management, mounting publicity and public education programmes, devising enforcement strategies and enlisting the support of relevant Government departments all require much planning and co-ordination. While HWB as the policy bureau on tobacco control must take the lead in these issues, there is a need for better co-ordination and a dedicated agency for assisting HWB in these functions. In this context, TCO appears to be the best candidate.

6.34 Save for the inter-departmental working group in operation between 1983 and 1985 (para. 3.25), there has not been another forum within Government for the departments concerned to exchange views on enforcement problems. With the steady increase in the types and number of no smoking venues (as proposed in Government's recent consultation document) and the inevitable rise in complaints, control and enforcement will become more taxing and demanding. This points to the need for an inter-departmental group to review strategies and modus operandi on a regular basis.

INADEQUACIES OF THE LAW

6.35 The first principle must be not to legislate unless the law can be, and will be, enforced. This is a measure of good governance. However, the provisions passed in the late 1990's do not seem to meet this basic requirement. There are also gaps in the Ordinance as detailed below.

Reporting of Smoking Offences

6.36 The Ordinance is silent on what venue management should do after obtaining the personal particulars of the offender pursuant to sections 3(3)(b) and 4(2)(b). HWB insists that venue management has the discretion to decide whether or not to report the offence to the authorities after collecting the personal particulars of the offender (para. 6.3). Our view is that the collection of such information is pointless if it is not to facilitate follow-up action by the proper authorities. Absence of such a requirement removes the impact and effect of control and makes frontline enforcement by venue management difficult.

Penalty for Non-enforcement

6.37 The Ordinance does not stipulate any penalty if venue management fails, deliberately or otherwise, to enforce the ban on smoking. In other words, venue management may choose to ignore its enforcement duties without sanction. The fact is that some venue management (particularly restaurant operators) are wary of enforcing the ban for fear of offending customers.

6.38 On this point, HWB has advised that the practice in most overseas countries is for venue management to be the frontline enforcement agent. Most of them have also chosen to solicit the support of venue management by way of education instead of penalty for non-compliance. According to HWB, Singapore is the only country which imposes a penalty on venue management for failing to enforce the ban. HWB anticipates strong resistance from venue management if Government were to penalise them for not enforcing the law. For these reasons, HWB prefers persuasion and education, not coercion, to continue to be the means for soliciting the support of venue management in "policing" no smoking areas.

6.39 This Office considers it reasonable to expect venue management, when empowered, to be positive and proactive in enforcing the ban. After all, many customers find smoking anti-social. While we do not suggest that venue management should be held responsible for smoking in no smoking areas, it should be required to take action when an offence comes to light, especially when a customer draws attention to an offence. Such a statutory obligation will encourage members of the public to report smoking offences and assist venue management in confronting the offenders.

6.40 Alternatively, for venues under licence, enforcement of the ban on smoking could be made a condition of licensing. We have made enquiry with FEHD on the feasibility of such a proposal. In response, FEHD advises that restaurant licences are issued under the Public Health and Municipal Services Ordinance (Cap. 132). Since the ban on smoking is imposed under Cap. 371 and not under Cap. 132,

the department might be challenged in court for acting *ultra vires* if it were to impose the ban as a restaurant licensing condition. FEHD also raises the question of double penalties to the restaurant licensees if their licences are to be revoked for contravening the licensing conditions.

6.41 This Office considers that, since anti-smoking is Government's established policy, the legal issues can be overcome through amendments to Cap. 132, which after all has been enacted to protect public health.

Enforcement Responsibilities

6.42 We note in Chapter 2 that the Ordinance has not made itself sufficiently clear as to which public agencies are responsible for enforcing its Part II. This has caused confusion to members of the public. As a variety of public places has no smoking areas, there is also confusion as to which Government department is responsible for what types of venues. This often offers a convenient excuse for departments not to take more active steps to enforce the Ordinance. To forestall this, there is a need to specify clearly in the Ordinance the departments/agencies responsible for enforcing the different provisions in Part II.

OTHER OBSERVATIONS

Voluntary Participation

6.43 In January 1996, Government announced a policy for

smoke-free workplace *vide* General Circular No. 2/96 issued by the Director of Administration (at **Annex XIII**). Smoking is prohibited in all Government workplaces. No smoking signs are displayed to indicate clearly that they are to be smoke-free. The arrangements set out in the circular are administrative in nature.

6.44 If department heads wish to have all, or part, of their premises designated as statutory no smoking areas, they may seek SHW's authority to include such premises in Schedule 3 to the Ordinance. These department heads will then have the statutory powers under Cap. 371 to take action against offenders.

6.45 Smoking is prohibited in civic centres, libraries, museums and swimming pools managed by LCSD under their respective by-laws. Administratively, LCSD imposes a ban on smoking in venues such as indoor recreational facilities, children playgrounds and play areas, athletic grounds and holiday camps. We commend the department for this positive initiative. In our opinion, there is considerable scope for Government workplaces and venues managed by Government departments (and even statutory organisations) which have already implemented the smoke-free policy to be included in Schedule 3. This will demonstrate Government determination in implementing its anti-smoking policy.

6.46 Schools, universities, tertiary educational institutions and restaurants (with less than 200 seats) are currently placed in Schedule 4 where participation in the ban on smoking is voluntary. The HWB consultation document

proposes that the ban in these venues be made mandatory, i.e. under Schedule 2 instead (paras. 4.9(a) and (b)). In the longer term, HWB intends to further extend the mandatory ban to other public indoor premises such as bathhouses, nightclubs and mahjong places. With this in mind, HWB may consider introducing voluntary ban in these venues (i.e. under Schedule 4) before imposing statutory ban (i.e. under Schedule 2).

Grace Periods

6.47 To allow time for all parties affected and Government to prepare for and adjust to new legal requirements, there is usually a grace period between the enactment and enforcement of the law. This Office notes that the grace periods for the operation of various amendments to Cap. 371 have been lengthened considerably over the years. In the 1992 amendment exercise, there was a grace period of about six months. For the 1997 amendments, it was extended to one year for supermarkets, banks, department stores and shopping malls and to two years for restaurants. Unnecessarily long grace periods dulls the memory and clouds the perception. It could even be misconstrued as Government not being serious.

Fire Safety and Other Considerations

6.48 The information pamphlets produced by TCO (Annex XI) mention about benefits to business, apart from health considerations, from the imposition of the ban on smoking : lower fire risk, better occupational safety, cleaner air, improved environmental hygiene, brighter business image, reduced sick leave and lower medical expenses for staff. All

these are important business considerations. They can be more widely and specifically publicised, on target basis, for more effective impact.

7

CONCLUSIONS AND RECOMMENDATIONS

GENERAL

7.1 Government intentions are clear but the commitment to control has fallen short of community expectations. This Office shares the concern of COSH and other community organisations over the lack of effective enforcement of the Ordinance. We appreciate and applaud Government's multi-prong approach with the emphasis on publicity and public education for long-term results. However, effective enforcement action and rigorous prosecution, where due, have their place in an integrated strategic framework for control, compliance and attitude change. This is particularly the case with the initial stages of implementation.

7.2 Government's consultation document published in June 2001 is a step forward in addressing the problems identified. However, unless the measures are enforceable and will be enforced, it would be counter-productive to introduce them.

CONCLUSIONS

7.3 On the basis of our investigation, this Office has come to the following conclusions -

(a) Government action in enforcing Part II of the Ordinance has not been positive or rigorous enough;

(b) Deficiencies both in the enforcement mechanism and in the law should be redressed; and

(c) The effectiveness of Government's anti-smoking policy has been undermined as a result.

RECOMMENDATIONS

7.4 Against this background, The Ombudsman makes the following recommendations to Government -

The Law

HWB

(a) To specify clearly in the Ordinance what to do with the personal particulars of offenders[1] so obtained in pursuance of

[1] Our original recommendation was for the law to be amended to specify the purpose for obtaining personal particulars of offenders. On HWB's reservations over the propriety in so using the law, this Office has revised this recommendation.

section 3(3)(b) or 4(2)(b)(para. 6.36);

(b) To consider the need for an offence in the Ordinance where venue management fails to enforce the ban on smoking (para. 6.39);

(c) To specify clearly in the Ordinance the public agencies or officers responsible for enforcing the provisions in Part II (para. 6.42);

EFB and FEHD

(d) To examine the mechanism for making the enforcement of the ban on smoking a licensing condition of restaurants (paras. 6.40 and 6.41);

Enforcement

HWB

(e) To provide clear guidelines and procedures to assist venue management in enforcing Part II of the Ordinance (paras. 6.5, 6.7, 6.8 and 6.10);

(f) To step up publicity, education and training on the legal requirements and the enforcement duties of venue

management, seeking the assistance of COSH and other departments whenever necessary (para. 6.11);

(g) To end the tolerant approach and to be more proactive in enforcement and more rigorous in prosecution of smoking offences in target venues attracting most complaints (paras. 6.21 and 6.23);

(h) To review, in consultation with relevant bureaux and departments, the division of responsibilities in enforcing Part II of the Ordinance (paras. 6.29 to 6.32);

(i) To strengthen the role of TCO/DH for co-ordination of departments in enforcing Part II of the Ordinance (para. 6.33);

(j) To re-constitute an inter-departmental group to review enforcement strategies and modus operandi regularly (para. 6.34);

EFB and FEHD

(k) To examine the scope for FEHD playing a more active role in enforcing the ban on smoking in restaurants (paras. 6.18 and 6.31);

Other Measures

HWB

(l) To step up efforts to encourage voluntary participation of agencies and premises to join the statutory ban on smoking (para. 6.45);

(m) To consider introducing voluntary ban in target venues before imposing statutory ban (para. 6.46);

(n) To avoid unnecessarily long grace periods for effecting amendments to the Ordinance (para. 6.47); and

(o) To publicise more widely and target-based the benefits of imposing the ban on smoking (para. 6.48).

8

FINAL REMARKS

8.1 We have invited comments from HWB, EFB, FEHD and DH. All parties[1] have forwarded their views including suggestions for amendment to the text. We appreciate their response and have carefully studied their comments, most of which have been incorporated into the corresponding paragraphs of the report. For those significant views that HWB and EFB wish to raise, we highlight below.

MAJOR COMMENTS AND VIEWS

HWB

8.2 HWB stresses that it has adopted a step-by-step approach in strengthening tobacco control in Hong Kong, through a combination of elements: such as legislation and taxation, publicity and education, as well as enforcement. On enforcement, HWB considers that "it hinges on the operators' own initiative, commitment and co-operation in conscientiously enforcing the non-smoking requirement in their respective premises". HWB has quoted international experience, which suggests that it requires a long process

[1] EFB and FEHD replied jointly to this Office and DH only proposed textual amendments to the report.

of adaptation and adjustment. HWB is of the view that "penalising the operators for failing to comply with the enforcement requirement will only back fire and erode the broad-based support required in every successful tobacco control campaign".

8.3 Given the vast number of premises and establishments under the policy for a ban on smoking indoors in public places, HWB considers that "it is neither practical nor realistic to expect the Administration to devote a disproportionate amount of resources for enforcement purposes". Insofar as tobacco control is concerned, HWB considers that "enforcement should not, and cannot, be the primary responsibility of the Government. Rather, the successful implementation of the law must be a community-wide effort, with full co-operation and commitment from the operators and members of the public at large as well".

8.4 On The Ombudsman's recommendations in Chapter 7, HWB has agreed to all but has some reservations on recommendation 7.4(a). Accordingly, we have revised it.

8.5 HWB has also suggested an alternative to recommendation 7.4(b). HWB favours The Ombudsman's recommendation 7.4(d) to make enforcement of the ban a licensing condition where venues, including restaurants, operate under licence. Renewal of such licence will be subject to reasonable compliance by the licence holder and operator with the licensing conditions, including that on enforcing the ban, in line with the present practice (para. 3.11).

EFB

8.6 In this connection, EFB has stated that it does not want to pre-empt result of the HWB review of the Ordinance. EFB considers it reasonable to examine FEHD's enforcement role within the overall context of that review. EFB also emphasises that enforcement of the Ordinance falls outside the core duties of Health Inspectors in their regular inspections of food business premises. EFB considers that the main purpose of such inspections is to ensure compliance with licensing conditions and food safety. Furthermore, EFB suggests that the frequency and duration of inspections to most food business premises might limit the effectiveness of any anti-smoking enforcement action by FEHD staff.

CONCLUDING REMARKS FROM THE OMBUDSMAN

8.7 While we fully appreciate Government's step-by-step multi-prong approach to tobacco control, experience over the decades has demonstrated that Government cannot rely solely on publicity and education. Enforcement is particularly important for deterrent impact. It is also obvious that our community is increasingly concerned over the lack of enforcement of the ban and has been urging for firmer enforcement.

8.8 On enforcement, we support involvement of venue management but Government cannot leave venue management to their own devices. This is neither fair nor, as shown by

experience, satisfactory. By assuming "a supportive role in educating, persuading and empowering the operators concerned", Government is taking an unduly narrow view of its role and responsibilities in meeting public expectations. On resources, we envisage enforcement on target basis, i.e. venues attracting most complaints for non-enforcement (para. 7.4(g)). We must reiterate our point that the deliberate deployment of Police manpower to curb illegal smoking is a wasteful use of resources (para. 6.30).

EPILOGUE

8.9 The Ombudsman should be kept informed of progress on the implementation of the recommendations and any major changes in policy and practices. This Office will follow up with HWB and relevant bureaux/departments half-yearly.

8.10 The Ombudsman expresses her sincerest appreciation for the co-operation and assistance rendered by HWB and relevant bureaux/departments throughout this investigation.

\- END -

Office of The Ombudsman
Ref. OMB/WP/14/1 S.F. 91
March 2002

ANNEXES

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Annex	Title	Paragraph reference
XIII	General Circular No. 2/96 issued by the Director of Administration	6.43
XIV	Extract on the interpretation of the word "manager" in section 2 of the Ordinance	Footnote to 3.1

A Summary of Part II of the Smoking (Public Health) Ordinance (Cap. 371)

Provision		Penalty	
Section	**Description**	**Section**	**Description**
3(1C)	Restaurant's manager to designate not less than one-third of the restaurant's area as no smoking area.	7(4)	Fine at Level 4 ($25,000)
3(2)	No person shall smoke in a no smoking area.	7(1)	Fine of $5,000
3(3)	Give name and address and produce proof of identity when being asked.	7(2)	Fine at Level 3 ($10,000)
4(1)	No person shall smoke in a public transport carrier.	7(1)	Fine of $5,000.
4(2)	Give name and address and produce proof of identity when being asked.	7(2)	Fine at Level 3 ($10,000)
5	The manager in charge to display prescribed no smoking signs in no smoking areas and public transport carriers.	7(3)	Fine at Level 4 ($25,000)
6A(1)	Restaurant's manager to display at the entrance a sign indicating whether no smoking seating is available.	6A(3)	Fine at Level 4 ($25,000)
6A(2)	Restaurant's manager to maintain the sign specified in s. 6A(1) in good order.	6A(3)	Fine at Level 4 ($25,000)

Annex II

SCHEDULE 1 [s. 2]

Public Transport Carriers Where Smoking is Prohibited

Item	Type of carrier
1.	A public bus operated under a franchise granted under the Public Bus Services Ordinance (Cap. 230).
2.	A public bus operated under a passenger service licence for the purposes of— (*a*) a tour service; (*b*) an international passenger service; (*c*) a hotel service; (*d*) a student service; (*e*) an employees' service; (*f*) a residents' service; (*g*) a multiple transport service; or (*h*) any other service approved by the Commissioner for Transport, under the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg.).
3.	A public light bus within the meaning of the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg.).
4.	A registered taxi within the meaning of the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg.).
5.	A train operated on the Mass Transit Railway under the Mass Transit Railway Corporation Ordinance (Cap. 270).
6.	A train operated on the Kowloon-Canton Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372).
7.	A light rail vehicle operated on the North-west Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372).
8.	A car used upon the tramway under the Tramway Ordinance (Cap. 107) other than on a hire tramway service.
9.	A tramcar used upon the tramway under the Peak Tramway Ordinance (Cap. 265).
10.	Those parts of a ferry vessel operated under a franchise or a licence granted under the Ferry Services Ordinance (Cap. 104) opened, kept or used for or in connection with the carriage of passengers or to which the passengers have or are permitted to have access.

(Added 9 of 1992 s. 16)

SCHEDULE 2 [s. 3]

Designated No Smoking Areas

Item	Type of area
1.	Any area opened, kept or used for, or in connection with, the purpose of providing seating accommodation in a cinema, theatre or concert hall.
2.	Any public lift.
3.	Any amusement game centre.
4.	(*a*) Any indoor area open to the public in a supermarket or bank. (*b*) Any indoor area open to the public in department stores or shopping malls, except the restaurant within a department store or a shopping mall. *(Added 93 of 1997 s. 24)*

(Added 9 of 1992 s. 16)

SCHEDULE 3 [ss. 2 & 3]

Item	Agency	Area
1.	Civil Aviation Department	Kai Tak Airport Passenger Terminal
2.	Airport Authority	Passenger terminal complex of the Airport as defined in section 2 of the Airport Authority Ordinance (Cap. 483) *(Added 93 of 1997 s. 25)*

(Added 68 of 1995 s. 40)

SCHEDULE 4 [s. 3]

Premises Specified under Section 3(1B) that may be Designated as No Smoking Areas

Item	Premises
1.	Restaurant.
2.	Schools registered or provisionally registered under the Education Ordinance (Cap. 279).
3.	Post secondary colleges, technical colleges or technical institutes, industrial training centres or skills centres.
4.	Universities.
5.	The Hong Kong Academy for Performing Arts.

(Schedule 4 added 93 of 1997 s. 26)

A List of Other Legislation with No Smoking Provisions[1]

(A) Regulations

Ordinance	Reg	Venue[2]	Reg	Penalty
Ferry Services Regulations (Cap. 104A)	14	Public ferry vessels	30	Fine of $2,000
Civic Centres Regulation (Cap. 132F)	8	Civic centres	15(a)	Fine at Level 1
Libraries Regulation (Cap. 132AL)	42(b)	Public libraries	44(a)	Fine at Level 1
Museums Regulation (Cap. 132AT)	12(b)	Public museums	16(a)	Fine at Level 1
Public Swimming Pools Regulation (Cap. 132BR)	4(h)	Public swimming pools	13(1)	Fine at Level 1 and imprisonment for 14 days
Education Regulations (Cap. 279A)	51(1)	Classrooms	-	-

(B) By-Laws

Ordinance	Bylaw	Venue[2]	Bylaw	Penalty
Hong Kong and Yaumati Ferry Company By-laws (Cap. 104D)	4(b) and 4(c)	Yaumati Ferry vessels	16	Fine of $2,000
"Star" Ferry Company, Limited By-laws (Cap. 104E)	4(1)(a)	"Star" Ferry vessels and premises	21	Fine of $2,000
Hospital Authority Bylaws (Cap. 113A)	7(1)(b)	HA hospitals	10(b)	Fine of $2,000 and imprisonment for 3 months

Ordinance	Bylaw	Venue[2]	Bylaw	Penalty
Peak Tramway By-laws (Cap. 265B)	9	Peak Tramway tramcars and premises	31 and Schedule	Fine of $5,000
Kowloon-Canton Railway Corporation By-laws (Cap. 372B)	54	KCR premises	105 and Schedule 2	Fine of $5,000
- ditto -	- ditto -	Light rail premises	- ditto -	- ditto -
Airport Authority Bylaws (Cap. 483A)	16(1)	Passenger terminal complex of the Airport	62 and Schedule 4	Fine at Level 2
Mass Transit Railway By-laws (Cap. 556B)	23	MTR premises	43 and Schedule	Fine of $5,000

Note 1 The list is intended for general reference only and is by no means exhaustive.

Note 2 Readers are advised to refer to the relevant legislation for the exact coverage of the no smoking areas.

Legend

Fine at Level 1 : $ 2,000
Fine at Level 2 : $ 5,000
(Schedule 8, Criminal Procedure Ordinance, Cap. 221)

Annex IV(a)

布政司署
香港下亞厘畢道

GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本署檔號 OUR REF: HW 4/3231/82(88)III

來函檔號 YOUR REF:

Telephone: 8102109

10 June 1992

Dear Sir/Madam

Prohibition on Smoking in Public Places and in Public Transport Carriers

It has long been Government's policy to discourage smoking. Following recent amendment to the Smoking (Public Health) Ordinance, of which you are aware from extensive coverage in the media, your attention is again drawn to important information that concerns you.

Grace Period

The amendment extends the prohibition on smoking to additional public places and public transport carriers. Managements and patrons of these places and carriers are given a grace period until 1 August 1992 to comply with the new requirements.

Prohibition on smoking

Section 3 of the Ordinance prohibits smoking in a no smoking area designated in Schedule 2 of the Ordinance. These include :

(a) all seating accommodation in cinemas, theatres or concert halls;

(b) public lifts; and

(c) amusement game centres.

Section 4 prohibits smoking in a public transport carrier while carrying passengers. Schedule 1 stipulates such carriers to include any public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel.

Smoking offence

Section 7 of the Ordinance provides that any person who smokes or carries a lighted cigarette, cigar or pipe in a no smoking area or in a passenger-bearing public transport carrier commits an offence and is liable on conviction to a fine of $5,000.

Powers of managements

Under sections 3 and 4 of the Ordinance, the manager or person-in-charge of a no smoking area or a public transport carrier :

(a) may require any person who smokes or holds a lighted cigarette, cigar or pipe to extinguish it after indicating to him that he is contravening the prohibition

(b) where the person fails to comply with the request in (a) the manager or person-in-charge may require him (i) to give his name and address and to produce proof of identity and (ii) to leave

(c) where the person fails to comply with the request in (b)(i) or (ii), the manager or person-in-charge may remove him from the no smoking area or public transport carrier using reasonable force as may be necessary.

Enforcement

Any person who fails to supply his personal particulars as required under sections 3 and 4 of the Ordinance commits an offence and is liable on conviction to a fine of $10,000. Where an offender refuses to provide the management with his personal particulars, the Police should be called in. If the offender still fails to provide his personal particulars, he is liable to be arrested by the Police. If he provides the information required, the Police will pass the details to the management for action.

If a breach of the peace is likely to be caused, the Police should be called.

No refund to offenders

A person who is required to leave or is removed from a no smoking area or public transport carrier shall not be entitled to a refund of any admission fee or fare paid by him.

Report to Government

The manager or person-in-charge should file a report with the relevant Government department in respect of any offender whose name and address have been taken so that summons action can be taken by the Police or the department concerned.

Enforcement under by-laws

Some corporations have their own by-laws for prohibiting smoking. Where penalties are adequate, managements may prefer to prosecute offenders under their own by-laws. , In some cases, the corporation's own ordinance or by-laws provide additional powers, eg power of arrest, which are not available under the Smoking (Public Health) Ordinance. Where a prosecution is brought under its own by-laws, the management should follow its usual procedures and is requested to inform the Government department concerned.

No smoking signs

The manager or person-in-charge of a no smoking area or public transport carrier is required to display prominently a sufficient number of no smoking signs which now include reference to the maximum penalty. These signs should read :

> "No smoking" or "Smoking Prohibited" and in Chinese "嚴禁吸煙"; and
>
> "Maximum Penalty : $5,000" and in Chinese "最高罰款 $5,000".

and must be in place by 1 August 1992. Failure to do so is an offence carrying a maximum fine of $15,000.

Action required by you

In summary, please note the following points :

(a) initial action against smokers must be taken by the management or its staff;

(b) the Police can be called in to assist, for the purpose of identifying the offender or in the event of a breach of the peace; and

(c) the Police or the relevant Government department will institute summons procedures in accordance with the information obtained from offenders by managements .

I attach for your reference :

(a) extracts from the Ordinance and subsidiary legislation **(Appendix A)**; and

(b) a list of relevant Government departments **(Appendix B)**.

Relevant Government departments will forward to you in due course a proforma which you can use to report offences.

I should be grateful if you would ensure that your staff are authorised by you to take the action required under sections 3 and 4 of the Ordinance. Please bring this letter to their attention so that they are aware of the courses of action available to them should they encounter non-compliance with the law.

The success of our efforts against smoking and enforcement of anti-smoking measures depends on the co-operation of managements and staff. I look to you for continuing support and thank you in anticipation.

In case of enquiries, please feel free to contact the undersigned.

Yours sincerely,

for Secretary for Health and Welfare

with translation

Extracts from Smoking (Public Health) Ordinance

2. Interpretation

In this Ordinance, unless the context otherwise requires-

"amusement game centre" has the meaning assigned to it by section 2 of the Miscellaneous Licences Ordinance (Cap. 114);

"cinema", "theatre" and "concert hall" mean-

(a) any building or part of a building used primarily as a cinema, theatre or concert hall, as the case may be, whether or not it is being so used at the material time, other than the premises of any club, association or other body in which films are exhibited, or plays or music performed for the benefit primarily of the members thereof and their guests;

(b) any place of public entertainment licensed under the Places of Public Entertainment Ordinance (Cap. 172) while open to the public on account of any concert, stage play, stage performance or other musical, dramatic or theatrical entertainment or any cinematography display;

"manager" in relation to-

(a) an amusement game centre, cinema, theatre, concert hall or public transport carrier, includes an assistant manager, any person holding an appointment analogous to that of manager or assistant manager or any person who is responsible for the management, or is in charge or control of the amusement game centre, cinema, theatre, concert hall or public transport carrier;

(b) a lift, includes the owner, occupier or lessee of the building in which the lift is situated or the person in charge or control of such building or lift;

"no smoking area" means an area designated as a no smoking area under section 3;

"proof of identity" means proof of identity for the purposes of Part IVA of the Immigration Ordinance;

"public lift" means a lift to which the public have access and includes any lift giving access to separately occupied flats, offices or other units of accommodation and a hotel lift;

"public transport carrier" means any public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel mentioned in Schedule 1 while the public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel is, subject to Schedule 1, carrying members of the public;

"smoke" means inhaling and expelling the smoke of tobacco or other substance;

3. Prohibition on smoking in certain designated areas

(1) The areas described in Schedule 2 are designated as no smoking areas.

(2) No person shall smoke or carry a lighted cigarette, cigar or pipe in a no smoking area.

(3) The manager of a no smoking area or any person authorized in that behalf by any such manager may, in respect of any person who appears to be contravening subsection (2) -

(a) after indicating that the person is smoking or carrying a lighted cigarette, cigar or pipe, as the case may be, in a no smoking area in contravention of subsection (2), require the person to extinguish the lighted cigarette, cigar or pipe;

(b) where the person fails to extinguish the lighted cigarette, cigar or pipe, require him --

(i) to give his name and address and to produce proof of identity; and

(ii) to leave the no smoking area;

(c) where the person fails, as required under paragraph (b) -

(i) to give his name and address and to produce proof of identity; or

(ii) to leave the no smoking area;

remove him from the no smoking area by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement of this section.

(4) Where a person is, under subsection (3), required to leave a no smoking area, removed from a no smoking area or detained, he shall not be entitled to a refund of any admission fee or money paid by him for entry into the premises or building in which the no smoking area is situated.

4. Prohibition on smoking in public transport carriers

(1) No person shall smoke or carry a lighted cigarette, cigar or pipe in a public transport carrier.

(2) The driver, conductor, inspector, ticket collector or manager of any public transport carrier may, in respect of any person who appears to be contravening subsection (1) -

(a) after indicating that the person is smoking or carrying a lighted cigarette, cigar or pipe, as the case may be, in a public transport carrier in contravention of subsection (1), require the person to extinguish the lighted cigarette, cigar or pipe;

(b) where the person fails to extinguish the lighted cigarette, cigar or pipe, require him -
(i) to give his name and address and to produce proof of identity; and
(ii) to leave the public transport carrier;

(c) where the person fails, as required under paragraph (b) -
(i) to give his name and address and to produce proof of identity; and
(ii) to leave the public transport carrier;

remove him from the public transport carrier by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement of this section.

(3) Where a person is, under subsection (2), required to leave a public transport carrier, removed from a public transport carrier or detained, he shall not be entitled to a refund of any money paid by him for carriage by the public transport carrier.

5. Display of signs where smoking prohibited

The manager shall place in a prominent position in each no smoking area or public transport carrier, as the case may be, a sufficient number of signs in English and Chinese to indicate that smoking is prohibited in the no smoking area or the public transport carrier and such signs shall be of the prescribed description and shall be maintained by the manager in legible condition and good order.

7. Offences under Part II

(1) Any person who contravenes sections 3 or 4 commits an offence and is liable on summary conviction to a fine of $5,000.

(2) Any person who fails to give his name and address or to produce proof of identity when required to do so under section 3(3) or 4(2) who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine of $10,000.

(3) Any manager who fails to place signs in accordance with section 5 or to maintain the signs in the manner required by that section commits an offence and is liable on summary conviction to a fine of $15,000.

SCHEDULE 1

PUBLIC TRANSPORT CARRIERS WHERE SMOKING IS PROHIBITED

Item	Type of carrier
1.	A public bus operated under a franchise granted under the Public Bus Services Ordinance (Cap. 230).
2.	A public bus operated under a passenger service licence for the purposes of - (a) a tour service; (b) an international passenger service; (c) a hotel service; (d) a student service; (e) an employees' service; (f) a residents' service; (g) a multiple transport service; or (h) any other service approved by the Commissioner for Transport, under the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub.leg.).
3.	A public light bus within the meaning of the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub.leg.).
4.	A registered taxi within the meaning of the Road Traffic Ordinance (Cap. 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub.leg.).
5.	A train operated on the Mass Transit Railway under the Mass Transit Railway Corporation Ordinance (Cap. 270).

Item	Type of carrier
6.	A train operated on the Kowloon-Canton Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372).
7.	A light rail vehicle operated on the North-west Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372).
8.	A car used upon the tramway under the Tramway Ordinance (Cap. 107) other than on a hire tramway service.
9.	A tramcar used upon the tramway under the Peak Tramway Ordinance (Cap. 265).
10.	Those part of a ferry vessel operated under a franchise or a licence granted under the Ferry Services Ordinance (Cap 104) opened, kept or used for or in connection with the carriage of passengers or to which the passengers have or are permitted to have access.

SCHEDULE 2

DESIGNATED NO SMOKING AREAS

Item	Type of area
1.	Any area opened, kept or used for, or in connection with, the purpose of providing seating accommodation in a cinema, theatre or concert hall.
2.	Any public lift.
3.	Any amusement game centre.

Extracts from
<u>Smoking (Public Health) (Notices) Order</u>

2. No smoking signs

No smoking signs placed under section 5 of the Ordinance shall -

(a) read -

(i) "No Smoking" or "Smoking Prohibited" and in Chinese " 嚴禁吸煙 ";

(ii) "Maximum Penalty : $5,000" and in Chinese " 最高罰款 $5,000";

(b) be in plain and readily legible letters or characters;

(c) be on a background of contrasting colour.

Relevant Government departments in respect of public places or public transport carriers where smoking is prohibited

Where smoking is prohibited	Government department concerned
Public lifts	Electrical & Mechanical Services Department
Public transport carriers (land)	Transport Department
Public transport carriers (sea)	Marine Department
Cinemas, theatres, concert halls	Urban Services Department-Hong Kong and Kowloon Regional Services Department-New Territories
Amusement game centres	Television and Entertainment and Licensing Authority

SMOKING (PUBLIC HEALTH) ORDINANCE (Chapter 371)
吸煙(公眾衞生)條例(香港法例三七一章)

Information Form
告發表格

(To be completed in either English or Chinese)
(以中文或英文填寫)

Date: ____________________
日期：

PARTICULARS OF OFFENDER
違例者的詳情

Name in full: ____________________ Name in Chinese (if any): ____________________
姓名(英文) 姓名(中文)(如適用)

Age: ____________________ Sex: ____________________
年齡 性別

Address: ____________________
地址

Type of Identity Document and Number: ____________________
身份證明文件種類及號碼

PARTICULARS OF INFORMANT/WITNESS
告發人／見證人的詳情

Name in full: ____________________ Name in Chinese (if any): ____________________
姓名(英文) 姓名(中文)(如適用)

Age: ____________________ Sex: ____________________
年齡 性別

Address: ____________________
地址

Type of Identity Document and Number: ____________________
身份證明文件種類及號碼

Name and Address of Employer: ____________________
僱主名稱及地址

ALLEGED OFFENCES (Please tick where appropriate)
聲稱的違例情形(請在適當的空格內填上"✓"號)

Section 7(1) Smoking or carrying a lighted cigarette, cigar or pipe in an area or public transport carrier where smoking is prohibited under sections 3 or 4:
第7(1)條 在第3或第4條規定禁止吸煙的區域或公共運輸工具吸食或持有已經燃點的香煙、雪茄或煙斗：

(a) that being an area opened for, kept or used for, or in connection with, the purpose of giving seating accommodation in a cinema, theatre or concert hall, designated as a no smoking area in Schedule 2; ☐
(甲)該區域是在電影院、劇場或音樂廳內闢作、撥作或用作座位或與此目的有關的區域，由附表2指定為禁止吸煙區；

(b) that being a public lift designated as a no smoking area in Schedule 2; ☐
(乙)該區域是由附表2指定為禁止吸煙區的公共升降機；

(c) that being an amusement game centre designated as a no smoking area in Schedule 2; or ☐
(丙)該區域是由附表2指定為禁止吸煙區的遊戲機中心；或

(d) that being a public transport carrier, as mentioned in Schedule 1, while it is carrying members of public. ☐
(丁)該公共運輸工具為附表1提及並正在接載公眾人士。

/s

Section 7(2) After being required to cease smoking in a no smoking area or public transport carrier a' fai'ing to do so:—

第七條第(2)款 要求違例者在禁止吸煙區或公共運輸工具內停止吸煙，但違例者不聽勸告：——

(e) Failing to give his/her name or address or to produce proof of identity.
(戊)未能提供其個人姓名、地址或出示身份證明文件。 ☐

(f) Giving a false or misleading name or address.
(己)提供虛假或誤導性姓名或地址。 ☐

BRIEF FACTS OF THE CASE (to include time, date, place and circumstances of the alleged offence)
案情扼要(包括報稱違例事件的時間、日期、地點及情況)

e.g. 例如 I am employed as an usherette in the XXX Cinema, Tung Lo Wan Road, Causeway Bay, Hong Kong. On 20th August 1992 while on duty in the cinema during the 7.30 show, it was brought to my attention that a C/M was holding and smoking a lighted cigarette in ROW G which is an area designated as a no smoking area and where signs are clearly exhibited forbidding smoking in that area. I approached the C/M, told him he was committing an offence and was liable to a fine of $5,000. I asked him either to extinguish his cigarette or leave the cinema. He ignored my request. I then asked him to provide his name and address and he refused. The Police was summoned and PC 1234 Mr. YYY of UB Eastern obtained the C/M's name and address and ID card no. I note these particulars and confirm that they are the offender's particulars.

本人在香港銅鑼灣，銅鑼灣道的XXX戲院任職帶位員。一九九二年八月二十日，戲院正放映七點半夜場，本人正在當值。當時發現指定為禁止吸煙區及清楚標明不准吸煙的G排，有一名中國男子手持一支燃着的香煙吸食。本人於是上前告訴該名男子，說他違反法例，並可能遭罰款五千元。本人請他一是弄熄香煙，一是離開戲院。但他不理會我的請求。其後我要求他把姓名和地址告訴我，但他拒絕。後來召警到場協助。東區警區軍裝警員1234號YYY查問該名男子姓名、地址和身份證號碼。我留意到該等資料，並證實確為該違例者的資料。

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or Offical Use Only)
:部門專用)

:SULT OF THE CASE:—
件結果 ______________________________

中華人民共和國香港特別行政區政府總部衞生福利局
Health and Welfare Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our Ref.: ( ) in HW CR 52/581/89 Pt.35

Your Ref.:

Tel: 2973 8107
Fax: 2840 0467
2869 4376

24 June 1999

Dear restaurant owners/managers,

Relevant provisions in the Smoking (Public Health) (Amendment) Ordinance 1997 in relation to the designation of no smoking areas in large restaurants will come into operation on 16 July 1999. I am writing to remind you of the details of such new requirements.

According to the relevant provision, "the manager of a restaurant which provides indoor seating accommodation for more than 200 persons, excluding accommodation being used exclusively for a private event and separated by full height partition, shall designate not less than one-third of the area of such as a no smoking area." The relevant legislation also empowers the manager to take necessary action against people smoking in the designated no smoking areas. First, the manager can require the offender to extinguish his lighted cigarette. If the offender refuses to take the manager's advice, the manager can require him to provide personal particulars and leave the no smoking area. Assistance of the police can also be sought if the offender still refuses to co-operate (see Annex A).

Furthermore, the manager should place in a prominent position in each no smoking area (such as on tables located in no smoking areas for use by customers) a sufficient number of no smoking signs and maintain these signs in legible condition and good order. The manager should also place in a prominent position in the restaurant and visible from the outside (such as a location near the front entrance door) a sign indicating the availability of no smoking areas inside the restaurant.

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20/F., Murray Building, Garden Road, Hong Kong.　Tel: (852) 2973 8168　Fax: (852) 2840 0467　2541 3352　2524 2743

Please refer to Annexes B and C for the prescribed description of the two signs mentioned above. Any person who fails to place the signs as required commits an offence and is liable to a fine.

The effective implementation of the relevant legislation hinges on your full co-operation. Should you have any enquiry, please contact the undersigned on 2973 8107 or Mr on 2973 8283.

Yours sincerely,

for Secretary for Health and Welfare

c.c.

President of the Federation of Hong Kong Restaurant Owners Ltd.

President of the Association of Restaurant Managers

(1C)* The manager of a restaurant which provides indoor seating accommodation for more than 200 persons, excluding accommodation being used exclusively for a private event and separated by full height partition, shall designate not less than one-third of the area of such as a no smoking area. *(Added 93 of 1997 s. 3)*

(2) No person shall smoke or carry a lighted cigarette, cigar or pipe in a no smoking area.

(3) The manager of a no smoking area or any person authorized in that behalf by any such manager may, in respect of any person who appears to be contravening subsection (2)—

(*a*) after indicating that the person is smoking or carrying a lighted cigarette, cigar or pipe, as the case may be, in a no smoking area in contravention of subsection (2), require the person to extinguish the lighted cigarette, cigar or pipe;

(*b*) where the person fails to extinguish the lighted cigarette, cigar or pipe, require him—

(i) to give his name and address and to produce proof of identity; and

(ii) to leave the no smoking area;

(*c*) where the person fails, as required under paragraph (*b*)—

(i) to give his name and address and to produce proof of identity; or

(ii) to leave the no smoking area,

remove him from the no smoking area by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement of this section.

(4) Where a person is, under subsection (3), required to leave a no smoking area, removed from a no smoking area or detained, he shall not be entitled to a refund of any admission fee or money paid by him for entry into the premises or building in which the no smoking area is situated.

(Replaced 9 of 1992 s. 3)

5. Display of signs where smoking prohibited

The manager shall place in a prominent position in each no smoking area or public transport carrier, as the case may be, a sufficient number of signs in English and Chinese to indicate that smoking is prohibited in the no smoking area or the public transport carrier and such signs shall be of the prescribed description and shall be maintained by the manager in legible condition and good order.

(Replaced 9 of 1992 s. 3)

2. No smoking signs

No smoking signs placed under section 5 of the Ordinance shall—

(*a*) read—

(i) "No Smoking" or "Smoking Prohibited" and in Chinese "嚴禁吸煙" or "禁止吸煙";

(ii) "Maximum Penalty: $5,000" and in Chinese "最高罰款$5,000" or "最高罰款伍仟元";

(*b*) be in plain and readily legible letters or characters;

(*c*) be on a background of contrasting colour.

(L.N. 413 of 1992)

6A. Display of signs outside restaurants

(1) The manager of a restaurant shall place and keep in place in a prominent position in the restaurant and visible from outside the restaurant a sign in English and Chinese indicating whether there is in the restaurant an area of its seating accommodation where smoking is not permitted.

(2) A sign required by subsection (1) shall be of the prescribed description and shall be maintained by the manager in legible condition and good order.

(3) Any manager who fails to place or keep in place a sign in accordance with subsection (1) or to maintain a sign in accordance with subsection (2) commits an offence and is liable on summary conviction to a fine at level 4.

(4) *(Repealed 93 of 1997 s. 4)*

(Added 91 of 1994 s. 4)

4B. Restaurant signs

(1) A sign required by section 6A of the Ordinance to indicate—
- (*a*) there is in the restaurant an area of its seating accommodation where smoking is not permitted shall be as set out in Form A in Part V of the Schedule;
- (*b*) there is not in the restaurant an area of its seating accommodation where smoking is not permitted shall be as set out in Form B in Part V of the Schedule.

(2) A sign required by section 6A of the Ordinance shall—
- (*a*) be square in shape with sides of at least 15 centimetres in length;
- (*b*) be in plain and readily legible letters and characters;
- (*c*) have letters and characters of a colour which contrasts with the colour of the background upon which they are printed;
- (*d*) be printed—
  - (i) in English, in Univers Bold; and
  - (ii) in Chinese, in Gothic Bold (中粗黑/粗黑); and
- (*e*) be printed so that the letters and characters occupy not less than 30% of the area of the sign.

(L.N. 558 of 1994)

RESTAURANT SIGNS

Form A



Annex VI

A list of Government departments to which smoking offences should be reported

Venue where smoking is prohibited	Government department responsible
Public land transport carriers (Note 1)	Transport Department
Public sea transport carriers	Marine Department
Cinemas, theatres, concert halls	Food and Environmental Hygiene Department
Public lifts	Police
Amusement game centres	Television and Entertainment Licensing Authority
Supermarkets, banks (Note 2)	Police
Department stores, shopping malls (Note 2)	Police
Restaurants with over 200 seats (Note 2)	Police

Note 1 Some public land transport companies such as MTRCL and KCRC prefer to take direct enforcement actions against smoking under their by-laws.

Note 2 Management of these venues were not notified of the reporting procedure by HWB. Instead, they were advised to seek Police assistance if offenders were not co-operative.

中華人民共和國香港特別行政區政府總部衞生福利局
Health and Welfare Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our Ref.: HW4 /3231/82(93) IV

Tel: 2973 8107
Fax: 2840 0467
2869 4376

Your Fax No.:
Total Pages:

1999

Dear Sir/Madam,

Contravention to Smoking (Public Health) Ordinance Cap.371

I am writing to remind you that your restaurant was found to have contravened the Smoking (Public Health) Ordinance for the following reason(s):-

- ☐ No designated "No Smoking Area" as required under section 3(1C) of the captioned Ordinance
- ☐ Area for "No Smoking Area" is insufficient as required under section 3(1C) of the captioned Ordinance
- ☐ No legible sign is visible from outside the restaurant indicating whether there is in the restaurant an area of its seating accommodation where smoking is not permitted, as required under section 6A(1) of the captioned Ordinance
- ☐ The "No Smoking" sign(s) in restaurant is(are) not in the conditions as required under section 5 or 6A(2) of the captioned Ordinance

Unannounced inspection of your restaurant will be conducted to check if the above contravention(s) has ceased. Prosecution may be instituted without further notice, should we find any contravention against the captioned Ordinance in the future.

Yours faithfully,

for Secretary for Health and Welfare

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Statistics on Warnings Issued to Restaurants by FEHD

Period	No. of Verbal Warning				No. of Written Warning			
	Section 3(1C)	Section 5	Section 6A(1)	Total	Section 3(1C)	Section 5	Section 6A(1)	Total
16.07.1999 - 15.09.1999	20	13	21	**54**	7	0	0	**7**
16.09.1999 - 15.11.1999	2	0	3	**5**	0	0	0	**0**
16.11.1999 - 15.01.2000	0	0	2	**2**	0	0	0	**0**
16.01.2000 - 15.03.2000	5	4	0	**9**	0	0	0	**0**
16.03.2000 - 15.05.2000	5	4	0	**9**	0	0	0	**0**
16.05.2000 - 15.07.2000	2	4	2	**8**	1	0	0	**1**
16.07.2000 - 15.09.2000	5	4	0	**9**	0	0	0	**0**
16.09.2000 - 15.11.2000	6	5	3	**14**	0	0	0	**0**
16.11.2000 - 15.01.2001	5	5	0	**10**	0	0	0	**0**
16.01.2001 - 15.03.2001	5	4	0	**9**	0	0	0	**0**
16.03.2001 - 15.05.2001	4	4	0	**8**	0	0	0	**0**
16.05.2001 - 15.07.2001	3	5	0	**8**	0	0	0	**0**
16.07.2001 - 15.09.2001	5	4	0	**9**	0	0	0	**0**
Grand Total	**67**	**56**	**31**	**154**	**8**	**0**	**0**	**8**

Source : Food and Environmental Hygiene Department (FEHD)

A list of Government departments responsible for checking the display of no smoking signs

Venue where smoking is prohibited	Government department responsible
Public land transport carriers	Transport Department
Public sea transport carriers	Marine Department
Cinemas, theatres, concert halls	Food and Environmental Hygiene Department
Public lifts	Electrical and Mechanical Services Department (registered lift contractors)
Amusement game centres	Television and Entertainment Licensing Authority
Supermarkets, banks	? (Note 1)
Department stores, shopping malls	? (Note 1)
Restaurants with over 200 seats	Food and Environmental Hygiene Department (Note 2)

<u>Note1</u> No designated Government departments are responsible for checking the display of no smoking signs in supermarkets, banks, department stores and shopping malls. However, TCO has been visiting the management companies of shopping malls to provide advice and guidance to them.

<u>Note 2</u> In addition to checking the display of no smoking signs, FEHD also checks whether sufficient no smoking areas are provided (section 3(1C)) and whether "no-smoking seating available" signs are displayed at the entrance of the restaurants (section 6A).

中華人民共和國香港特別行政區政府總部衞生福利局
Health and Welfare Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our Ref. : ( ) in HWB/M/30B/1 pt 2

Your Ref. :

Tel : 2973 8107
Fax : 2840 0467
2869 4376

16 February 2000

Dear Sir/Madam ,

Enforcement of No Smoking Requirement in Shopping Malls and Department Stores

I am writing to remind you of the statutory requirements in connection with prohibition of smoking inside the premises under your management responsibility.

You may be aware that recently there have been considerable public concerns over the non-compliance of no smoking requirement inside indoor shopping malls and department stores in Hong Kong. Under Section 3(1) and Schedule 2 of the Smoking (Public Health) Ordinance (Cap 371), indoor shopping malls and department stores are designated as no smoking area with effect from 1 July 1998. In accordance with Section 3(2) of the said Ordinance, no person shall smoke or carry a lighted tobacco product in a no smoking area. Any person who fails to comply with this section commits an offence.

To ensure effective enforcement of the above statutory requirement, Section 3(3) of the above Ordinance empowers the manager of a no smoking area or any person authorized by the manager to stop the person from smoking or carrying the lighted tobacco product in the no smoking area. If fails, the empowered person can require the alleged offender to give his personal information and require him to leave the no smoking area. The empowered

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person may also remove the alleged offender from the no smoking area by the use of reasonable force, detain him and call for assistance of a police officer if necessary.

The effective implementation of the no smoking requirement inside shopping malls and department stores hinges largely on the enforcement effort undertaken by managers of the premises. To this end, I would be grateful if you would consider taking the following actions :

(a) remind your frontline staff of their duty in enforcing the no smoking requirement, and the authority conferred upon them under Section 3(3) of the Ordinance;

(b) issue guidelines/instructions to facilitate their enforcement of the no smoking requirement;

(c) place additional no smoking signs in prominent position to remind customers of such requirements; and

(d) remove ashtrays located in the proximity of sitting-out areas inside your premises to avoid conveying a false impression of a designated smoking area for customers.

If you have difficulty in implementing the no smoking requirement in your premises as stipulated under the said Ordinance, please feel free to contact the undersigned or Mr on 2973 8240.

Yours sincerely,

for Secretary for Health & Welfare

Introduction

Restaurant managers are empowered by the Smoking (Public Health) Ordinance to set up and maintain "No Smoking" areas within the restaurants.

This pamphlet will briefly describe the relevant parts of the Ordinance. You may refer to the original Ordinance or contact the Tobacco Control Office for more details or enquries.



Tobacco Control Office
Department of Health
21/F, Wu Chung House,
213 Queen's Road East, Wanchai,
Hong Kong

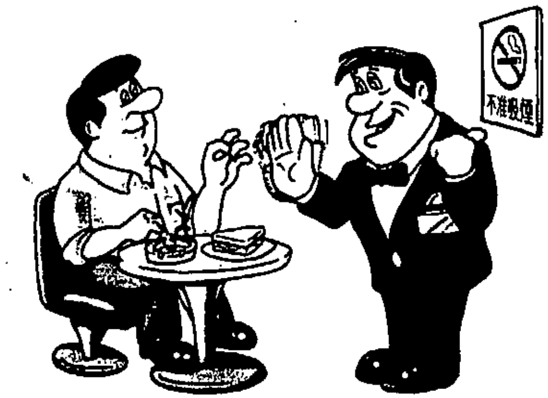
Tel. No.
2961 8823

As the Manager of a restaurant which provides indoor seating for more than 200 persons, you should:

- designate at least one-third of the restaurant as no smoking area,
- place a clear sign at the entrance in English and Chinese indicating no smoking seating is available,
- place sufficient number of signs in English and Chinese to indicate that smoking is prohibited in the no smoking area,
- ensure that no person shall smoke in the no smoking area.

Restaurant Sign





What a manager or his/her staff should do if somebody smokes in the no smoking area?

Most smokers are willing to comply with the no smoking restriction, if they are asked politely. Thus, you may simply request the person to extinguish the cigarette, cigar or pipe.

If the smoker refuses to listen, you may ask the person:

(i) to give his name and address and to produce proof of identity; and

(ii) to leave the no smoking area.*

* *You may even remove the person from the no smoking area and call for the assistance of a police officer.*

Annex XI(a)

Tobacco Control

Your Role as a Shopping Mall Manager / Staff



衛生署
DEPARTMENT OF HEALTH

衛生署 控煙辦公室
TOBACCO CONTROL OFFICE
DEPARTMENT OF HEALTH

Introduction

According to the Smoking (Public Health) Ordinance, any indoor area opening to the public in shopping malls is designated no-smoking area.

This pamphlet will briefly describe the relevant parts of the Ordinance. You may refer to the original Ordinance or contact the Tobacco Control Office for more details or enquiries.

Smoke-free Shopping Mall Guidelines

As the manager / staff of the shopping mall, you should:

- Place a sufficient number of no smoking signs in English and Chinese in a prominent position to indicate that smoking is prohibited in the shopping mall.
- Ensure that no person shall smoke in the shopping mall.
- Require a person to extinguish the cigarette, cigar or pipe if he / she is smoking in the no smoking area. If the person refuses to do so, you may require him / her :
  - i. To give his / her name and address and to produce proof of identity; and
  - ii. To leave the no smoking area. *

* *If a person is required to leave under such condition, he / she shall not be entitled to a refund of any admission or money paid by him/her for entry into the premises.*

* *You may even remove the person from the no smoking area and call for the assistance of a police officer.*



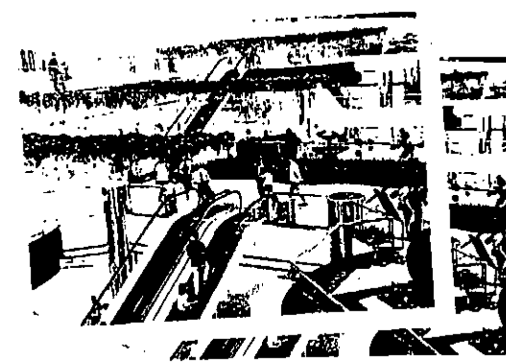
Smoke-free Shopping Mall

Reduce fire hazards

Good for business image

Protect employees' and customers' health

- Smoke-free shopping mall results in better air quality environmental hygiene, durable decoration and ar overall better image.
- Working in a smoke-free workplace, employees have less chance to suffer respiratory illnesses. It lead: to a decrease in sick leave, medical and operationa costs.
- Fire hazards are minimized in a smoke-fre environment.



Tobacco Control Office
Department of Health

21/F., Wu Chung House,
213 Queen's Road East, Wan Chai,
Hong Kong.

Phone No.
2961 8823

Annex XI(b)

Findings of the Restaurant Baseline Survey Conducted by DH in late 2000

1. Restaurant managers' knowledge on the Smoking (Public Health) Ordinance

- 39% (79 out of 205) of the restaurant managers knew that restaurants with 200 seats or more must provide no smoking areas
- 72% (146 out of 205) of the managers knew that the size of the no smoking areas must be at least one-third of the restaurant areas
- 2% (4 out of 205) of the managers knew that they could ask smokers in no smoking areas to produce proof of identify if they do not comply with the regulation
- 37% (75 out of 205) of the managers knew that they could call the Police for assistance if the smokers were not cooperative

2. Restaurant managers' attitudes towards enforcing the Ordinance

- 78% (160 out of 205) of the respondents expressed that implementing the Ordinance had either beneficial or no effect on the restaurants' business
- 75% (154 out of 205) of the respondents felt that implementing the Ordinance was easy or no comments

3. Observation results on the implementation of the Ordinance by restaurants

- 92% (188 out of 205) of the restaurants had set up no smoking area
- 44% (82 out of 188) of the no smoking areas did not meet the required size of one-third of the restaurant areas
- 25% (46 out of 188) of the restaurants had not displayed the "No-Smoking Seating Available" sign at the entrance
- 22% (41 out of 188) of the restaurants had not displayed any "no smoking" sign in the dinning areas

Annex XIII

Government Secretariat
Hong Kong

File Ref : CSO/GC L/M 3/92

15 January 1996

GENERAL CIRCULAR No. 2/96

Smoke-free Workplace Policy

(Note : Distribution of this Circular is Scale C)

This Circular outlines the smoke-free workplace policy and sets out guidelines for heads of departments and branch secretaries (hereinafter referred to collectively as Heads) to implement the policy in Government workplaces under their control.

Background

2. There is increasing evidence to indicate that smoking is harmful to both smokers as well as to non-smokers who breathe in other people's smoke. Such environmental tobacco smoke (ETS) is a principal source of indoor air pollution and contains many hazardous substances which are known poisons, carcinogens and irritants. The World Health Organization has called for the introduction of a smoke-free workplace policy and for all Government buildings to become smoke-free. Many countries have already introduced such measures. As Hong Kong's largest employer, Government should be seen to be taking the lead to provide a healthy and safe working environment for employees.

Smoke-free Workplaces

3. Heads should prohibit smoking in all Government workplaces under their control, including both office and non-office environments. All enclosed or open-plan working areas, corridors, foyers, conference rooms, reception and counter areas, waiting rooms and public areas are to be smoke-free. Signs should be displayed to clearly indicate that the premises are a "smoke-free workplace" and that smoking by staff is permitted only in designated smoking areas. Visitors should be asked not to smoke.

4. The above designation is only administrative in nature. If Heads wish premises to be designated as a statutory no-smoking area, they should write to the Secretary for Health and Welfare. The premises will then be included in Schedule 3 of the Smoking (Public Health) Ordinance, Cap. 371. Following this, Heads may designate all or part of the premises as a no-smoking area by notice in the Gazette. This will give Heads statutory powers against offenders and make smoking in the premises an offence attracting a fine of $5,000 on summary conviction. An example of a statutory no-smoking area is the Kai Tak Airport Passenger Terminal under the control of the Civil Aviation Department.

Designated Smoking Areas

5. Where physically possible, designated smoking areas should be provided. They should be physically enclosed and have a separate air supply from the rest of the workplace. The location and size of the designated smoking area(s) should be determined after consultation with both smoking and non-smoking staff and their location should be clearly displayed. The need for such areas should be regularly reviewed, with a view to phasing them out.

6. The provision of designated smoking areas should not be grounds for requesting additional space or incurring substantial costs, and any alteration to the ventilation system should be phased in and costed with the normal works programme. Where space does not allow for a separate smoking area, consideration should be given to designating toilets, stairwells or other non-working space for this purpose. Failing that, staff should be consulted on whether the workplace should be made wholly smoke-free or whether a "smoking corner" (preferably with an open window) should be allowed.

Enforcement

7. Heads should adopt a supportive rather than an authoritarian stance in enforcing the smoke-free workplace policy. Staff who smoke outside the designated smoking area should be counselled by their supervisor on the hazards of ETS and the need to maintain a healthy workplace. They should be reminded to be considerate to others. Similarly, where only a "smoking corner" is available, staff should have the courtesy to seek their non-smoking colleagues' agreement before lighting up.

Implementation

8. Heads should nominate an officer at appropriate level to co-ordinate, implement and monitor the policy. The name and contact number of the officer should be given to the Secretary for Health and Welfare for future contact purposes.

9. The smoke-free workplace policy will come into effect on 1 April 1996. By this date, Heads should have consulted their staff , erected signs and established designated smoking areas/ "smoking corners" (if any). An announcement should have been circulated to all staff, including :

- an explanation of the smoke-free workplace policy
- the name and contact number of the departmental co-ordinator, and
- the location of designated smoking area(s) or "smoking corner" (if any)

The departmental circular should be copied to the Health and Welfare Branch for information purposes.

Enquiries

10. The Secretary for Health and Welfare is responsible for the development and implementation of the smokefree workplace policy in Government workplaces. Any enquiry should be directed to Mr PAS(HW)M3 (2810 2109) or Miss AS(HW)M4 (2810 2391) of the Health and Welfare Branch in the first instance.

11. This circular supersedes paragraphs 8 and 9 of General Circular No. 7/92, the remaining paragraphs of which are still in force pending review.

for Director of Administration

c.c. Judiciary Administrator

Extract on theinterpretation of the word "manager" in section 2 of the Ordinance

"manager" (管理人) in relation to—

(*a*) an amusement game centre, cinema, theatre, concert hall, public transport carrier, restaurant, department store, shopping mall, supermarket or bank, includes an assistant manager, any person holding an appointment analogous to that of manager or assistant manager or any person who is responsible for the management, or is in charge or control of the amusement game centre, cinema, theatre, concert hall, public transport carrier, restaurant, department store, shopping mall, supermarket or bank; *(Replaced 9 of 1992 s. 2. Amended 91 of 1994 s. 3; 93 of 1997 s. 2)*

(*b*) a lift, includes the owner, occupier or lessee of the building in which the lift is situated or the person in charge or control of such building or lift;

(*c*) a no smoking area designated under section 3(1A), means the principal officer who makes such a designation; *(Added 68 of 1995 s. 37)*